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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 490.

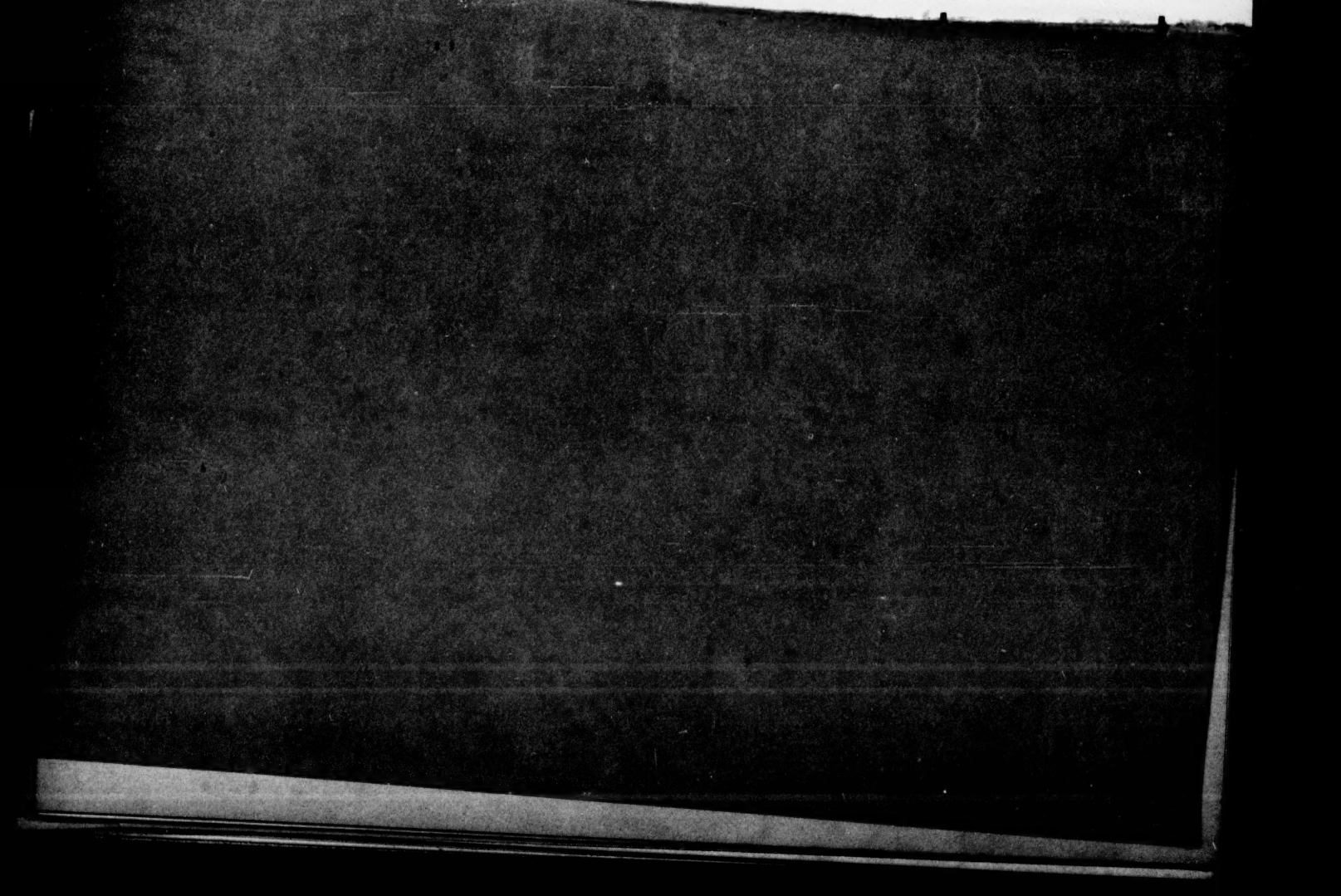
HENRY A. TURNER, PLAINTIFF IN ERROR,

vs.

THE STATE OF MARYLAND.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

FILED FEBRUARY 26, 1881.



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1 STATE OF MARYLAND, *set:*

At a court of appeals of the State of Maryland, begun and held for the said State, at the city of Annapolis, on the first Monday of October, it being the fourth day of said month, in A. D. one thousand eight hundred and eighty, and of the Independence of the United States of America the one hundred and fifth—present, the honorable James L. Bartol, chief judge; and associate judges, seven: T. H. Irving, John M. Robinson, Richard Grason, Richard H. Alvey, Oliver Miller, Richard J. Bowie, George Brent. Among other were the following proceedings, to wit:

In the criminal court of Baltimore.

THE STATE OF MARYLAND
vs.
HENRY A. TURNER. } In the criminal court of Baltimore.

Presentment.—Filed 18th September, 1880.

In the criminal court of Baltimore, May term, 1880.

The jurors of the State of Maryland do, on their oath, present: That Henry A. Turner, late of Charles County, yeoman, did, on November 15th, 1879, ship to Baltimore one hogshead containing tobacco, of a quantity unknown to the said jurors, grown by him upon his farm in Charles County, Maryland, and from Baltimore, on August 31, 1880, did ship the said hogshead of tobacco to Bremen, in Germany, without delivering, or causing to be delivered, before said last shipment, said hogshead of tobacco, at any one of the State tobacco warehouses, and without the said hogshead of tobacco having been weighed, passed, and marked by any State inspector of tobacco, and without the said Henry A. Turner having paid any charge for outage or storage on said hogshead of tobacco to any State inspector of tobacco.

JOHN G. MEDINGER, *Foreman.*

Whereupon capias ad respondendum issued; returned by the sheriff: "Non est."

Indictment.—Filed 18' *September,* 1880.

STATE OF MARYLAND,
City of Baltimore, to wit:

The jurors of the State of Maryland, for the body of the city of Baltimore, do, on their oath, present: That Henry A. Turner, late of Charles County, in the State of Maryland, yeoman, did, on the fifteenth day of November, in the year of our Lord eighteen hundred and seventy-nine, cause to grow upon a certain farm belonging to him, the said Henry A. Turner, and situated in the county aforesaid, in the State aforesaid, a certain crop of tobacco, belonging to him, the said Henry A. Turner, and did then and there pack a certain quantity of said tobacco, so grown and belonging to

him, the said Henry A. Turner, as aforesaid, of a weight to the said jurors unknown, in a certain hogshead belonging to him, the said Henry A. Turner, of a size and dimensions to the said jurors unknown; and did then and there mark the said hogshead of said tobacco, so grown, and so belonging to him, the said Henry A. Turner, as aforesaid, and so packed by him, as aforesaid, with the full name of him, the said Henry A. Turner, marked on said hogshead, and with the place of residence of him, the said Henry A. Turner, to wit: Bryantown, in Charles County, in said State of Maryland, fully marked on said hogs-
2 head; and did then and there ship the said hogshead of tobacco, by him, the said Henry A. Turner, so grown, packed, and marked, as aforesaid, and so belonging to the said Henry A. Turner, to the city of Baltimore, in the State of Maryland aforesaid; that said hogshead of tobacco, so grown, packed, and marked, and so shipped as aforesaid, by the said Henry A. Turner, to the city of Baltimore aforesaid, and so belonging to the said Henry A. Turner, was not delivered at any tobacco warehouse in the city of Baltimore, under the management or control of any inspector of tobacco appointed for said warehouse by the governor of the State of Maryland, under the constitution and laws of said State, nor to any one of said inspectors of tobacco, nor to any person acting under the authority of any one of said inspectors of tobacco, to be weighed, passed, or marked; and that the said hogshead of tobacco, so grown by and belonging to him, the said Henry A. Turner, and so packed, marked, and shipped as aforesaid, was not weighed, passed, and marked by any inspector of tobacco appointed by the governor of the State of Maryland, under the constitution and laws of said State, for any tobacco warehouse in the city of Baltimore, nor by any person acting under the authority of any one of said inspectors of tobacco, so appointed as aforesaid, as he, the said Henry A. Turner, ought to have caused to be done; but that, on the contrary, he, the said Henry A. Turner, did, afterwards, to wit, on the thirty-first day of August, in the year of our Lord eighteen hundred and eighty, at the city of Baltimore aforesaid, unlawfully proceed to export, and did unlawfully export the said hogshead of tobacco so belonging to him, the said Henry A. Turner, and so grown, packed, and marked as aforesaid, from the said city of Baltimore, in the State of Maryland aforesaid, to the port of Bremen, in Germany, without having procured the same to be weighed, passed, and marked by any inspector of tobacco appointed by the governor of the State of Maryland, under the constitution and laws of the said State, for any tobacco warehouse in the city of Baltimore, or by any person acting under the authority of any one of said inspectors of tobacco so appointed, against the form of the statutes in such case made and provided, and against the peace, government, and dignity of the State.

SECOND COUNT.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Henry A. Turner, late of Charles County, in the State of Maryland, yeoman, did, on the fifteenth day of November, in the year of our Lord eighteen hundred and seventy-nine, cause to grow upon a certain farm belonging to him, the said Henry A. Turner, and situated in the county aforesaid, in the State aforesaid, a certain crop of tobacco belonging to him, the said Henry A. Turner, and did then and there pack a certain quantity of said tobacco, so grown and so belonging to him, the

said Henry A. Turner, as aforesaid, of a weight to the jurors unknown, in a certain hogshead belonging to him, the said Henry A. Turner, of a size and dimensions to the said jurors unknown, and did mark the said hogshead of said tobacco so grown and so belonging to him, the said Henry A. Turner, as aforesaid, and so packed by him as aforesaid, with the full name of him, the said Henry A. Turner, marked on said hogshead, and with the place of residence of him, the said Henry A. Turner, to wit: Bryantown, in Charles County, in the said State of Maryland, fully marked on said hogshead, and did then and there ship the said hogshead of tobacco so by him, the said Henry A. Turner, grown, packed, and marked as aforesaid, to the city of Baltimore, in the State of Maryland aforesaid, but did not deliver, or cause to be delivered, the said hogshead of tobacco so by him grown, and so packed,
and marked, and shipped as aforesaid, at any tobacco warehouse in
3 the city of Baltimore, under the management or control of any inspector of tobacco appointed for such warehouse by the governor of the State of Maryland, under the constitution and laws of said State, nor to any one of said inspectors of tobacco, nor to any person acting under the authority of any one of said inspectors of tobacco, to be weighed, passed, or marked, and that the said hogshead of tobacco so belonging to him, the said Henry A. Turner, and so grown, packed, and marked as aforesaid, was not weighed, passed, and marked by any inspector of tobacco appointed by the governor of the State of Maryland, under the constitution and laws of said State, for any tobacco warehouse in the city of Baltimore, nor by any person acting under the authority of any one of said inspectors of tobacco so appointed as aforesaid, as he, the said Henry A. Turner, ought to have caused to be done; but that he, the said Henry A. Turner, on the contrary, did, on the thirty-first day of August, in the year of our Lord eighteen hundred and eighty, at the city of Baltimore aforesaid, proceed to export, and did unlawfully export the said hogshead of tobacco so belonging to him, the said Henry A. Turner, and so grown, packed, and marked as aforesaid, from the said city of Baltimore, in the State of Maryland aforesaid, to the port of Bremen, in Germany, without having procured the same to be weighed, passed, and marked by any inspector of tobacco, appointed by the governor of the State of Maryland, under the constitution and laws of said State, for any tobacco warehouse in the city of Baltimore, or by any person acting under the authority of any one of said inspectors of tobacco so appointed, and that he, the said Henry A. Turner, did not, prior to said exportation, pay, or cause to be paid, any sum of money due for outage to the State of Maryland on said hogshead of tobacco, or any sum of money due for storage to the State of Maryland on said hogshead of tobacco, so by him packed, marked, and shipped as aforesaid, to any inspector of tobacco appointed by the governor of the State of Maryland, for any tobacco warehouse in the city of Baltimore, in the State aforesaid, or to any other person having authority to receive the same, as he, the said Henry A. Turner, ought, by law, to have done, or caused to be done; but that he, the said Henry A. Turner, on the contrary, did, on the thirty-first day of August, in the year of our Lord eighteen hundred and eighty, at the city of Baltimore aforesaid, unlawfully proceed to export, and did unlawfully export the said hogshead of tobacco so belonging to him, the said Henry A. Turner, and so grown, packed, and marked as aforesaid, from the said city of Baltimore, in the said State of Maryland, to the port of Bremen, in

Germany, without having procured the same to be weighed, passed, and marked by any inspector of tobacco appointed by the governor of the State of Maryland, under the constitution and laws of said State, for any tobacco warehouse in the city of Baltimore, or by any person acting under the authority of any one of said inspectors of tobacco so appointed, and without paying, or causing to be paid, any sum of money due to the State of Maryland for outage, or any sum of money due to the State of Maryland for storage on said hogshead of tobacco, so by him packed, marked, and shipped as aforesaid, to any inspector of tobacco appoined by the governor of the State of Maryland, for any tobacco warehouse in the city of Baltimore, or to any person authorized to receive the same, although certain sums of money were due and payable by him, the said Henry A. Turner, to the said State of Maryland, for outage and storage on the said hogshead of tobacco, against the form of the statute in such case made and provided, and against the peace, government, and dignity of the State.

CHARLES G. KERR,
The State's Attorney for the City of Baltimore.

4 The aforegoing indictment thus endorsed, to wit:

"True bill.

"JOHN G. MRDINGER, *Foreman.*"

Was duly returned to the court.

Demurrer.—Filed 20th Sept., 1880.

In the criminal court of Baltimore.

STATE OF MARYLAND
vs.
HENRY A. TURNER.

And the said Henry A. Turner cometh into court here, and, having heard said indictment read, saith that the first count in said indictment, and the matters therein contained, in the manner and the form as the same are therein stated and set forth, are not sufficient in law, and that he is not bound by the law of the land to answer the same, and this he is ready to verify. Wherefore, for want of a sufficient indictment in this behalf, the said Henry A. Turner prays judgment, and that by this court here he may be dismissed and discharged from the premises in the said court in said indictment specified.

JOHN K. COWEN,
E. J. D. CROSS,
Att'ys for Henry A. Turner.

Demurrer.—Filed 20th Sept., 1880.

In the criminal court of Baltimore.

STATE OF MARYLAND
vs.
HENRY A. TURNER.

And the said Henry A. Turner cometh into court here, and, having heard

said indictment read, saith that the second count in the said indictment, and the matters therein contained, in the manner and form as the same are therein stated and set forth, are not sufficient in law, and that he is not bound by the law of the land to answer the same, and this he is ready to verify. Wherefore, for want of a sufficient indictment in this behalf, the said Henry A. Turner prays judgment, and that by this court here he may be dismissed and discharged from the premises in the said court in said indictment specified.

JOHN K. COWEN,
E. J. D. CROSS,
Att'ys for Henry A. Turner.

Same day (20th Sept., 1880), the following agreement was filed:

In the criminal court of Baltimore.

STATE OF MARYLAND }
vs.
HENRY A. TURNER. }

5 It is agreed in this case—

1. That the matters and facts charged in the indictment in this case are true as therein stated.

2. That for the more speedy final determination of the questions of law involved in this case, the demurrers which the traverser has entered to this indictment shall be overruled pro forma by the court.

3. That after such overruling of the demurrers the case shall be forthwith submitted to the court without the intervention of a jury, upon the admission contained in the first paragraph of this agreement.

JOHN K. COWEN,
E. J. D. CROSS,
Att'ys for Traverser.
CHARLES G. KERR,
The State's Attorney for Baltimore City.

Same day demurrers to first and second counts of indictment overruled.

Same day judgment that the traverser pay a fine of ($300) three hundred dollars to the State of Maryland.

Petition.—Filed 20th Sept., 1880.

In the criminal court of Baltimore.

THE STATE OF MARYLAND }
vs.
HENRY A. TURNER. }

To the honorable Campbell W. Pinkney, judge of the criminal court of Baltimore:

The petition of Henry A. Turner respectfully represents that by the record and proceedings of this court in the above-mentioned case, it appears that on the twentieth day of September he was adjudged guilty of an

alleged misdemeanor, and by judgment of this court was ordered to pay the sum of three hundred dollars unto the State of Maryland.

Your petitioner alleges that, by said proceedings, and by said conviction and judgment, he feels aggrieved, and that in said record and proceedings there was error; and he assigns for errors therein the following, to wit:

First. That said judgment was rendered by the court in favor of the State of Maryland against your petitioner, when, according to the laws of the land, the said judgment ought to have been given in favor of your petitioner, and he ought to have been acquitted of said charge.

Second. That the demurrer of your petitioner to the first count in said indictment was overruled by the court, when the same should have been sustained by the court.

Third. That the demurrer of your petitioner to the second count in said indictment was overruled by the court, when the same should have been sustained by the court.

Fourth. That the demurrer of your petitioner to the first count in said indictment was overruled by the court, when the same should have been sustained, because, under the provisions of the act of as-
6 sembly of Maryland passed in the year 1870, chapter 291, if the same be in force, your petitioner was not required by said act, or by any other law of the State of Maryland, to deliver at any of the State tobacco warehouses in the city of Baltimore, for purposes of inspection, or for any purpose whatever, tobacco which he had grown on his farm and packed in the county or neighborhood where grown, as set forth in said indictment, prior to the exportation of such tobacco by him from the State of Maryland.

Fifth. That the demurrer of your petitioner to the second count in said indictment was overruled by the court, when the same should have been sustained, because there is no law requiring the payment of charges for outage and storage on such tobacco, described in said count, to any officer of the State of Maryland; and because the act of 1870, chapter 291, if the same be held to be in force, is in contravention of the Constitution of the United States, in so far as said act requires the payment of outage and storage charged upon tobacco grown, packed, marked, and exported in the manner designated in the proviso of said act.

Sixth. In that said judgment required your petitioner to pay the sum of three hundred dollars to the State of Maryland as a penalty for said alleged offence, when there is no such penalty prescribed by said act of 1870, chapter 291, nor by any other law of the State of Maryland, for non-payment of such charges of outage and storage upon tobacco grown, packed, marked, and exported in the manner described in said indictment; nor is there any such penalty imposed by any law of the State of Maryland for not delivering at any of the State tobacco warehouses in the city of Baltimore tobacco grown, packed, marked, and exported in the manner described in said indictment.

Wherefore he prays that the record and proceedings in said case, with all things touching or in anywise concerning the same, may be sent, under the seal of this court, to the court of appeals of the State of Maryland, in order that said record and proceedings may be inspected by said court,

that it may cause to be done thereupon for correcting such errors what of right ought to be done.

And, as in duty, &c.

JOHN K. COWEN,
E. J. D. CROSS,
Att'ys for Henry A. Turner.

Sept. 20, 1880. Petition allowed.

C. W. PINKNEY.

STATE OF MARYLAND,
City of Baltimore, to wit:

I, John S. Bullock, clerk of the criminal court of Baltimore, do hereby certify that the aforegoing is truly taken from the record of proceedings in the said court in the therein-named cause.

In testimony whereof I hereto set my hand and affix the seal of said court on this twenty-fifth day of September, A. D. 1880.

[SEAL'S PLACE.] JOHN S. BULLOCK, *Clerk, &c.*

7 *Opinion of the court of appeals of Maryland.*

In the court of appeals of Maryland. October term, 1880.

HENRY A. TURNER
vs.
STATE OF MARYLAND.

Judge ROBINSON delivered the opinion of the court.

The appellant was indicted for violating the tobacco inspection laws of this State.

The first count in the indictment charges that the appellant, being a grower of tobacco, packed a certain quantity of such tobacco in a hogshead of unknown dimensions, and exported it to Bremen, Germany, without having such hogshead of tobacco inspected and passed according to the laws of this State.

In addition to these facts, the second count charges that he did not pay the outage due the State on the tobacco thus exported.

To this indictment the appellant filed a demurrer, and the question on this appeal is whether the facts thus set forth constitute an indictable offence.

This question depends—

1st. Upon the construction of the several statutes of this State regulating the inspection of tobacco; and

2d. Upon the construction of the clause in the Constitution of the United States which provides that

"No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws," article 1, section 10, sub-clause 2.

By the code of 1860, all prior laws in regard to the inspection of tobacco were codified as part of the public local law, under title of the "City of Baltimore," sub-title "Tobacco."

These provisions of public local law were repealed by the act of 1864, chapter 346, and certain new sections were inserted in lieu thereof.

The act of 1864 provided for the appointment of inspectors of tobacco, defined their duties, and prescribed the mode and manner in which tobacco was to be inspected. It prescribed the dimensions of the hogshead in which tobacco was to be packed, and required each hogshead of to-
8 bacco received at the State tobacco warehouse to be numbered in succession as received, and provided for ascertaining the gross and net weight of each hogshead thus delivered.

Complete provision was made for the inspection of each hogshead by sampling after it was opened for inspection, and for staying and reconditioning unmerchantable tobacco.

It was provided that every hogshead of tobacco should be liable to a prescribed charge for outage in proportion to its weight, and the 41st section declared "that it should not be lawful to carry out of this State, in hogsheads, any tobacco raised in this State, except in hogsheads which shall have been inspected, passed, and marked agreeably to the provisions of this act."

It will thus be seen that it was necessary, in the first place, that the inspectors should examine the hogshead to ascertain whether it was of the dimensions required by the act; and in the next, that they should inspect the tobacco itself by sampling the contents. When this was done, and the weight ascertained, the hogshead was passed.

By the act of 1870, chapter 291, the grower or purchaser of tobacco, packed in the county or neighborhood, was permitted to export the same without having the hogshead opened for inspection by sampling its contents, but the act required such hogsheads to be marked with the name and residence of the owner, and to be liable for the charge of outage as in other cases, and any one violating its provisions was liable to the penalty imposed by section 41 of the act of 1864.

The act of 1870, in thus permitting the grower or purchaser of tobacco, packed in the county or neighborhood, to export the same without having the hogshead opened for inspection, does not dispense with any other requirement of the act of 1864 in regard to inspection. It provides, in express terms, that each hogshead thus packed shall be marked with the name and residence of the owner, and it was necessary, therefore, that some one should ascertain whether these requirements were complied with, and whether the tobacco was, in fact, the growth of the county or neighborhood where it was packed. It also required that such tobacco should be liable for the same charge of outage as in other cases, and as the charge of outage depended upon the weight of the hogshead, it was necessary that some one should ascertain the weight of such hogshead, in order to determine the amount to be paid. It did not change or in any manner dispense with the statutory requirements in regard to the dimensions of the hogshead in which such tobacco was to be packed, and it was necessary that some one should see that these requirements were complied with. These and other duties, it is obvious, were to be performed by the inspectors, and when performed, the hogshead was to be passed and marked as provided by the act of 1864. When the words "such tobacco so carried out of the State without inspection" are read in connection with the preceding sentence, which permits the grower or purchaser to export such tobacco "without having the same opened for inspection," it is clear the term "without inspection" refers to inspection by opening the hogshead and sampling the contents.

9 While the act of 1864, as amended by the act of 1870, was in force, the legislature passed the act of 1872, chapter 36, entitled "An act to add a new article to the code of public general laws, regulating the inspection of tobacco."

This act changes, in some respects, the provisions of the act of 1864, omits others, and in express terms repeals all acts or parts of acts inconsistent with its provisions.

The penal clause of the act of 1864, as amended by the act of 1870, which made it unlawful to carry out of the State in hogsheads tobacco raised in this State except in hogsheads inspected, passed, and marked according to the provisions of the act is omitted in the act of 1872. And the appellant insists that this act was intended as a substitute for all prior acts on the subject; and that there is now no law in force in this State by which the inspection of tobacco is made compulsory. It seeems to be well settled that where the legislature makes a revision of particular statutes and passes a general statute upon the subject, and it is evident from the general frame-work of the statute and the manner in which the subject-matter is dealt with, that the legislature intended such general statute to be a complete system of legislation in regard to the matter, the statute thus passed must be considered as a substitute for all prior laws on the subject; and the provisions of such prior laws as are not embraced by the latter statute are thereby repealed.

It was upon this principle that the general incorporation act of 1868, framed by commissioners appointed in pursuance of the constitution of 1867, was held to be a substitute for all prior laws in regard to corporations. (Montel & Co., 30 Md., 164.)

We find nothing, however, either in the title or general frame-work of the act, or in the manner in which the subject-matter is dealt with, to justify the conclusion that the legislature intended the act of 1872 as a substitute for all prior legislation on the subject. By the title, it merely proposes to add a new article to the code of general laws regulating the inspection of tobacco. No reference whatever is made to prior laws, except to repeal all acts inconsistent with its provisions.

If we examine its several sections and compare them with the sections of the act of 1864 in regard to the same matter it is apparent, we think, the legislature did not intend the act of 1872 to be a revision and substitute for all prior laws regulating the inspection of tobacco; on the contrary, the provisions of such prior laws are absolutely essential to give completeness to the system of which the act of 1872 is but a part. It does not, it is true, make it unlawful to export tobacco raised in this State unless the same shall have been inspected and passed, but it does provide that "no tobacco, the growth of this State, shall be passed or accounted lawful tobacco, unless the same be packed in hogsheads" of certain prescribed dimensions.

It does not say, in so many words, that the tobacco raised in this State and intended for exportation shall be delivered at one of the State tobacco warehouses, but it does provide for the appointment of inspectors
10 of tobacco, clerks, and other officials, with fixed salaries, and assigns them to the tobacco warehouses with no other duty to perform unless it be the inspection of tobacco.

In thus declaring that no tobacco, the growth of this State, shall be

accounted lawful tobacco unless packed in the manner prescribed by the act, it is plain the legislature meant it to be the duty of the inspectors appointed by the act to ascertain whether such tobacco was thus packed in conformity with the requirements of the statute, and this they could not do unless such tobacco was delivered at the State tobacco warehouses.

The legislature, from the earliest history of the colony, and since the formation of the State government, has made the inspection of tobacco raised in this State compulsory. To this end the State has expended nearly a million of dollars in the erection of tobacco warehouses in the city of Baltimore, and the very act now under consideration, and which, it is insisted, repeals such laws, appoints a large staff of officers, with salaries, for the purpose of inspecting tobacco. If, then, it had been the intention of the act of 1872 to abandon this policy so long recognized by the State, it is but reasonable to suppose that the legislature would have declared such intention in plain and unambiguous terms, and not left it to be ascertained by construction and implication.

With the policy of inspection laws, whether they act as restraints on trade, alike injurious to the producer and consumer, are questions for the consideration of the law-making power. Our duty is simply to declare what the law is, and the question here is whether the act of 1872 was intended as a substitute for all prior laws on the subject. In our opinion it was not. The legislature meant, and only meant, to select certain provisions from the public local law in relation to the inspection of tobacco, and to re-enact these in a public general law, and to leave such portions of the local law which it did not thus re-enact and did not modify or repeal by inconsistent provisions as existing parts of the local law.

The act of 1872 did not modify or repeal section 41 of the act of 1864, as modified by the act of 1870, which constituted part of the local law; and under that section it was the duty of the appellant to have delivered the tobacco packed by him to one of the State tobacco warehouses, in order that the inspectors might ascertain whether it was packed in hogsheads of the proper dimensions, and whether it was packed in the county or neighborhood where it was grown, and marked as the statute directed.

And this brings us to the second question—whether the charge of outage is in contravention of the Constitution of the United States, which prohibits any State from levying a tax on imports or exports, except so far as such tax may be absolutely necessary for the execution of its inspection laws. And this question resolves itself into this: whether this charge of outage is an inspection duty within the meaning of the Constitution. If it be an inspection duty, then it is no objection to the duty itself, because it partakes of the nature of a tax on exports.

11 In considering the powers of a State to pass inspection laws under this clause of the Constitution, Chief Justice Marshall says: "If it be a rule of interpretation to which all assent, that the exception of a particular thing from general words proves that, in the opinion of the lawgiver, the thing excepted would be within the general clause had not the exception been made, we know of no reason why this general rule should not be as applicable to the Constitution as to other instruments. * * * The exception was made because the tax would otherwise have been within the prohibition."

We come then to the question whether the charge of outage is an in-

spection duty. It is urged on the part of the appellant that under the act of 1864, as modified by the act of 1870, the only duty to be performed by the inspector in this case was an examination of the hogshead to ascertain whether it was of the proper dimensions, and to ascertain further, whether it was packed by the appellant as grower in the county or neighborhood where it was grown; and that the charge of outage under such circumstances is not an inspection duty within the meaning of the Constitution.

The object of inspection laws, ordinarily, is to improve the quality of the productions of a country, and thereby better fit them for domestic use or for exportation. But we are by no means prepared to concede that the inspection must be confined to an examination of the quality of the article itself. To prepare the products of a State for exportation it may be necessary that such products should be put in packages of a certain form and of certain prescribed dimensions. This may be necessary either on account of the nature and character of such products or to enable the State to identify the products of its own growth, and to furnish the evidence of such identification in the markets to which they are exported.

In the brief filed by the attorney-general he has industriously collected the several statutes of the States on this subject, and it appears from the earliest period of the government that nearly every State has prescribed by law the size, form, and weight of packages containing articles grown or produced by such States, and has made the size and weight of such packages subject to inspection. Many of these statutes are referred to by Mr. Emmert in his argument in the celebrated case of Gibbons vs. Ogden, 9 Wheaton, 120; and in delivering the opinion of the court in that case Chief Justice Marshall nowhere intimates that such statutes are not a valid exercise of legislative power.

We must conclude, therefore, that the State has the power to prescribe the dimensions of the hogshead in which tobacco raised in this State is packed and to require such hogshead to be delivered at one of the State tobacco warehouses in order that the inspectors may ascertain whether it conforms to the requirements of the law, and whether it is the true growth of the State, and packed by the grower or purchaser in the county or neighborhood where it was grown; and that the charge of outage, to reimburse the State for the expenses thereby incurred, and in consideration of
12 storage of such hogshead of tobacco, is in the nature of an inspection duty within the meaning of the Constitution of the United States.

There was no error, therefore, in overruling the demurrer to the indictment.

The objection to the fine of three hundred dollars imposed by the court is equally untenable. It was the duty of the appellant to have delivered the hogshead of tobacco mentioned in the indictment to one of the State tobacco warehouses in order that the inspectors might ascertain whether such hogshead was of the dimensions required by the statute, and whether the tobacco was packed as required by the act of 1870; and upon his failure to do so the appellant was liable to the penalty prescribed by section 41 of the act of 1864. It was his duty also, under the act of 1870, to mark the hogshead with his full name; but the legislature never meant that merely marking the name of the grower or purchaser on the hogshead released such grower or purchaser from the other requirements of the act.

accounted lawful tobacco unless packed in the manner prescribed by the act, it is plain the legislature meant it to be the duty of the inspectors appointed by the act to ascertain whether such tobacco was thus packed in conformity with the requirements of the statute, and this they could not do unless such tobacco was delivered at the State tobacco warehouses.

The legislature, from the earliest history of the colony, and since the formation of the State government, has made the inspection of tobacco raised in this State compulsory. To this end the State has expended nearly a million of dollars in the erection of tobacco warehouses in the city of Baltimore, and the very act now under consideration, and which, it is insisted, repeals such laws, appoints a large staff of officers, with salaries, for the purpose of inspecting tobacco. If, then, it had been the intention of the act of 1872 to abandon this policy so long recognized by the State, it is but reasonable to suppose that the legislature would have declared such intention in plain and unambiguous terms, and not left it to be ascertained by construction and implication.

With the policy of inspection laws, whether they act as restraints on trade, alike injurious to the producer and consumer, are questions for the consideration of the law-making power. Our duty is simply to declare what the law is, and the question here is whether the act of 1872 was intended as a substitute for all prior laws on the subject. In our opinion it was not. The legislature meant, and only meant, to select certain provisions from the public local law in relation to the inspection of tobacco, and to re-enact these in a public general law, and to leave such portions of the local law which it did not thus re-enact and did not modify or repeal by inconsistent provisions as existing parts of the local law.

The act of 1872 did not modify or repeal section 41 of the act of 1864, as modified by the act of 1870, which constituted part of the local law; and under that section it was the duty of the appellant to have delivered the tobacco packed by him to one of the State tobacco warehouses, in order that the inspectors might ascertain whether it was packed in hogsheads of the proper dimensions, and whether it was packed in the county or neighborhood where it was grown, and marked as the statute directed.

And this brings us to the second question—whether the charge of outage is in contravention of the Constitution of the United States, which prohibits any State from levying a tax on imports or exports, except so far as such tax may be absolutely necessary for the execution of its inspection laws. And this question resolves itself into this: whether this charge of outage is an inspection duty within the meaning of the Constitution. If it be an inspection duty, then it is no objection to the duty itself, because it partakes of the nature of a tax on exports.

11 In considering the powers of a State to pass inspection laws under this clause of the Constitution, Chief Justice Marshall says: "If it be a rule of interpretation to which all assent, that the exception of a particular thing from general words proves that, in the opinion of the lawgiver, the thing excepted would be within the general clause had not the exception been made, we know of no reason why this general rule should not be as applicable to the Constitution as to other instruments. * * * The exception was made because the tax would otherwise have been within the prohibition."

We come then to the question whether the charge of outage is an in-

spection duty. It is urged on the part of the appellant that under the act of 1864, as modified by the act of 1870, the only duty to be performed by the inspector in this case was an examination of the hogshead to ascertain whether it was of the proper dimensions, and to ascertain further, whether it was packed by the appellant as grower in the county or neighborhood where it was grown; and that the charge of outage under such circumstances is not an inspection duty within the meaning of the Constitution.

The object of inspection laws, ordinarily, is to improve the quality of the productions of a country, and thereby better fit them for domestic use or for exportation. But we are by no means prepared to concede that the inspection must be confined to an examination of the quality of the article itself. To prepare the products of a State for exportation it may be necessary that such products should be put in packages of a certain form and of certain prescribed dimensions. This may be necessary either on account of the nature and character of such products or to enable the State to identify the products of its own growth, and to furnish the evidence of such identification in the markets to which they are exported.

In the brief filed by the attorney-general he has industriously collected the several statutes of the States on this subject, and it appears from the earliest period of the government that nearly every State has prescribed by law the size, form, and weight of packages containing articles grown or produced by such States, and has made the size and weight of such packages subject to inspection. Many of these statutes are referred to by Mr. Emmert in his argument in the celebrated case of Gibbons vs. Ogden, 9 Wheaton, 120; and in delivering the opinion of the court in that case Chief Justice Marshall nowhere intimates that such statutes are not a valid exercise of legislative power.

We must conclude, therefore, that the State has the power to prescribe the dimensions of the hogshead in which tobacco raised in this State is packed and to require such hogshead to be delivered at one of the State tobacco warehouses in order that the inspectors may ascertain whether it conforms to the requirements of the law, and whether it is the true growth of the State, and packed by the grower or purchaser in the county or neighborhood where it was grown; and that the charge of outage, to reimburse the State for the expenses thereby incurred, and in consideration of
12 storage of such hogshead of tobacco, is in the nature of an inspection duty within the meaning of the Constitution of the United States.

There was no error, therefore, in overruling the demurrer to the indictment.

The objection to the fine of three hundred dollars imposed by the court is equally untenable. It was the duty of the appellant to have delivered the hogshead of tobacco mentioned in the indictment to one of the State tobacco warehouses in order that the inspectors might ascertain whether such hogshead was of the dimensions required by the statute, and whether the tobacco was packed as required by the act of 1870; and upon his failure to do so the appellant was liable to the penalty prescribed by section 41 of the act of 1864. It was his duty also, under the act of 1870, to mark the hogshead with his full name; but the legislature never meant that merely marking the name of the grower or purchaser on the hogshead released such grower or purchaser from the other requirements of the act.

The judgment below must therefore be affirmed.
Judgment affirmed.

13 Judgment was affirmed in this case on the 21st day of January, 1881, and execution awarded for the sum of $300, with interest thereon from the 20th day of September, 1880, until paid, and $ costs in the criminal court of Baltimore and $100.95 costs in the court of appeals.

14 To the honorable James L. Bartol, chief judge of the court of appeals of Maryland:

The petition of Henry A. Turner respectfully represents:

That a final judgment has been rendered by the court of appeals of Maryland in a suit therein pending, wherein the State of Maryland is plaintiff and the said Henry A. Turner is defendant.

That the court of appeals aforesaid is the highest court of law in the State of Maryland in which a decision in the said suit could be had.

That in said suit there is drawn in question the validity of a statute of and an authority exercised under the United States, and the decision is against the validity of such statute and of such authority.

That in said suit there is drawn in question the validity of a statute of, to wit, the act of 1870, chapter 291, and an authority exercised under the State of Maryland, on the ground of such statute and authority being repugnant to the Constitution and laws of the United States, and the decision is in favor of such statute and authority.

That in said suit a right and privilege are claimed under the Constitution and statutes of the United States, and the decision is against the
15 right and privilege set up and claimed by your petitioner under such Constitution and statutes.

All of which appears upon the face of the record accompanying this application.

Wherefore, to the end that the said judgment may be re-examined and reversed and affirmed in the Supreme Court of the United States, upon a writ of error, your petitioner prays that a writ and that a citation may issue in the same manner as if the said judgment had been rendered in a circuit court of the United States.

JOHN K. COWEN,
E. J. D. CROSS,
Counsel for Henry A. Turner.

The above petition is granted, and a writ of error is allowed as therein prayed.

JAS. L. BARTOL,
Chief Judge of the Court of Appeals of Md.

FEB'Y 19TH, 1881.

16 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the court of appeals of Maryland, greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said court of appeals, before you or some

of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Henry A. Turner, appellant, and the State of Maryland, appellee, wherein was drawn in question the validity of a statute or of an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution, or statute of the United States, and the decision was against the right or privilege specially set up or claimed under the said clause of the said Constitution or statute, a manifest error hath happened to the great damage of the said Henry A. Turner, as by his complaint appears: we, being willing
that error, if any hath been, should be duly corrected, and full and
17 speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 21st day of February, in the year of our Lord one thousand eight hundred and eighty-one.

SEAL OF U. S. CIRCUIT COURT.

JAS. W. CHEW.
Clerk of the Circuit Court of the United States for the District of Maryland.

Allowed by—

The Hon. JAS. L. BARTOL,
Chief Judge of the Court of Appeals of Maryland.

18 Know all men by these presents that we, Henry A. Turner, of Charles County, in the State of Maryland, and Alexander T. Leftwich, are held and firmly bound unto the State of Maryland in the just and full sum of eight hundred dollars to be paid unto the said State of Maryland, its certain attorney or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this eighteenth day of February, in the year eighteen hundred and eighty-one.

Whereas lately in the court of appeals of Maryland, in a suit depending in said court between the State of Maryland against the said Henry A Turner, defendant, and carried on appeal to said court of appeals from the criminal court of Baltimore City, judgment was rendered against said Henry A. Turner, and the said Henry A. Turner having obtained a writ of error, and filed a copy thereof in the office of the clerk of said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Maryland, citing and admonishing

it to be and appear at the Supreme Court of the United States, to be holden at Washington on the second Monday of October next:

19 Now, the condition of the above obligation is such that if the said Henry A. Turner shall prosecute said writ to effect, and shall answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

HENRY A. TURNER. [SEAL.]
ALEXANDER T. LEFTWICH. [SEAL.]

Test:
FREDERICK L. DENT.
JNO. T. MADDOX.

STATE OF MARYLAND,
City of Baltimore, to wit:

I hereby certify that on this sixteenth day of February, 1881, before the subscriber, a justice of the peace of the State of Maryland, in and for the city of Baltimore, personally appeared Alexander T. Leftwich, one of the obligors in the above bond, and made oath in due form of law that he is worth more than eight hundred dollars, the amount of the penalty of said bond, after the payment of his just debt and of all debts for which he is liable as surety or otherwise.

Witness my hand seal the day and year first above written.

JNO. P. MADDOX, *J. P.* [SEAL.]

20 STATE OF MARYLAND,
City of Baltimore, to wit:

I hereby certify that Jno. T. Maddox, esquire, before whom the annexed affidavit was made, and who has thereto subscribed his name, was, at the time of so doing, a justice of the peace of the State of Maryland, in and for the city of Baltimore, duly commissioned and sworn.

In testimony whereof I hereto set my hand and affix the seal of the superior court of Baltimore City, this 29th day of February, A. D. 1881.

[L. S.] FRANCIS A. PREVOST,
Clerk of Superior Court of Baltimore City.

The above bond approved this nineteenth day of February, 1881, by me.

JAS. L. BARTOL,
Ch. J. Ct. of App'ls of Md.

21 The United States of America to the State of Maryland, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the court of appeals of Maryland, wherein Henry A. Turner is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable James L. Bartol, chief judge of the court of

appeals of Maryland, this nineteenth day of February, in the year of our Lord one thousand eight hundred and eighty-one.

JAS. L. BARTOL,
Chief Judge of the Court of Appeals of Maryland.

Service of copy of the aforegoing citation admitted this twenty-third day of February, 1881.

CHAS. J. M. GWINN,
Att'y-Gen'l of Maryland.

22 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the court of appeals of Maryland, greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said court of appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said writ, between Henry A. Turner, appellant, and the State of Maryland, appellee, wherein was drawn in question the validity of a statute or of an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute or of an authority, exercised under said State, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or statute of the United States, and the decision was against the right or privilege specially set up or claimed under the said clause of the said Constitution or statute, a manifest error hath happened, to the great damage of the said Henry A. Turner, as by his complaint appears: we, being willing that error, if any hath been, should be duly corrected, and full and
23 speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States this 21st day of February, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.]

JAS. W. CHEW,
Clerk of the Circuit Court of the United States for the District of Maryland.

Allowed by—

The Hon. JAS. L. BARTOL,
Chief Judge of the Court of Appeals of Maryland.

24 STATE OF MARYLAND,
City of Annapolis, to wit:

I, Spencer C. Jones, clerk of the court of appeals of Maryland, at Annapolis, in obedience to the mandate of a writ of error awarded by the honorable James L. Bartol, chief judge of the court of appeals of Maryland, bearing date the 19th day of February, 1881, do hereby certify that the foregoing record is a true transcript of the record and proceedings in the case of Henry A. Turner vs. The State of Maryland as the same remains on file in the clerk's office of the said court of appeals.

And I do further certify that the said court of appeals is the highest court of law or equity in said State in which a decision can be had in said case.

And I do further certify that the foregoing bond in said record is a true copy of the bond in said case, which was filed in my office on the 23rd day of February, 1881.

And I do further certify that the foregoing writ of error in said record is a true copy of said writ awarded by the said the honorable James L. Bartol, chief judge as aforesaid, to the judgment of said court, and I herewith transmit the original of said writ; and I do further certify that a copy of said writ was duly filed in my office, for the State of Mary-
25 land, on the 23rd day of February, 1881.

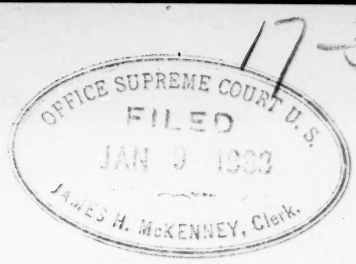
And I do further certify that the copy of the opinion of the court of appeals in said record is a true copy of the same as rendered by said court in said case, and on file in my office; and that said judgment in said court of appeals in said case was rendered on the 21st day of January, 1881.

In testimony whereof I have hereunto subscribed my name as clerk of the said court of appeals of Maryland, and affixed the official seal of said court at my office in Annapolis, Maryland, on the 23rd day of February, A. D. 1881.

[SEAL.] SPENCER C. JONES,
Clerk Court of Appeals, Maryland.

Cost of transcript, $10.

(Indorsement on cover:) No. 490. Henry A. Turner, plaintiff in error, vs. The State of Maryland. Maryland court of appeals. Filed, 26th February, 1881.



17-39

Supreme Court of the United States.

OCTOBER TERM, 1882.

No. 490.

HENRY A. TURNER,

Plaintiff in Error,

vs.

THE STATE OF MARYLAND.

BRIEF FOR PLAINTIFF IN ERROR.

JOHN K. COWEN,
E. J. D. CROSS,
of Counsel for Plaintiff in Error.

The Sun Job Print, Baltimore.

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

No. 490.

HENRY A. TURNER,

Plaintiff in Error,

vs.

THE STATE OF MARYLAND.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

On September 18th, 1880, the plaintiff in error was indicted by the Grand Jury of the Criminal Court of Baltimore city, for having exported from Baltimore to Bremen, on the 31st day of August, 1880, certain hogsheads of tobacco without their having been weighed, passed and marked by the State Inspectors of Tobacco, and without having paid to the proper inspection officers certain charges for "outage and storage" alleged to be due under the tobacco inspection laws of the State of Maryland.

The indictment (pp. 1-3 Record) contained two counts. The first count alleged that Henry A. Turner having raised upon his farm, in Charles county, Maryland, a crop of tobacco, packed a hogshead thereof, of unknown weight, size and dimensions, and having marked the same with his name and residence, shipped it to the City

of Baltimore, but did not deliver it to any tobacco warehouse under the control of the Inspectors of Tobacco appointed under the laws of the State of Maryland to have the same weighed, passed and marked by an inspector, but caused the same to be exported to Bremen without having it weighed, passed and marked by such official.

The second count alleged in substance the offence charged in the first, with the additional allegation that certain charges for outage and storage were not paid unto the State officials prior to exportation.

To both these counts demurrers were filed, which were overruled by the court, and the traverser fined $300.

The case was taken to the Court of Appeals of Maryland upon writ of error, by which court the judgment of the Criminal Court was affirmed. A writ of error was allowed to this court by Hon. Jas. L. Bartol, Chief Judge of the Court of Appeals of Maryland.

ASSIGNMENT OF ERRORS.

The assignment of errors in the petition were as follows:

(1.) That in said suit there is drawn in question the validity of a statute of and an authority exercised under the United States, and the decision is against the validity of such statute and of such authority.

(2.) That in said suit there is drawn in question the validity of a statute of, to wit: the Act of 1870, chapter 291, and an authority exercised under the State of Maryland, on the ground of such statute and authority being repugnant to the Constitution and laws of the United States, and the decision is in favor of such statute and authority.

(3.) That in said suit a right and privilege are claimed under the Constitution and statutes of the United States, and the decision is against the right and privilege set up and claimed by the plaintiff in error under such constitution and statutes.

Certain Acts of the Legislature of Maryland, viz: Acts 1878, c. 386; 1874, c. 394; 1872, c. 36; 1870, c. 291; 1864, c. 346, and parts of certain former Acts are printed in an appendix to this brief.

The various acts there given comprise the recent legislation upon the inspection of tobacco subsequent to the Code of 1860.

These laws seek to regulate the inspection of tobacco, provide for certain officials and establish a scale of charges to be paid.

The Act of 1870, c 291, amended the Act of 1864, c. 346, which took the place of Sections 465 to 551, inclusive, of Art. IV, Code of Public Local Laws, title City of Baltimore, sub-title "Tobacco." Section 41 of this Act of 1864, which took the place of Section 535, of the Code, as amended by the Act of 1870, c. 291, is as follows:

"Ater the passage of this Act it shall not be lawful to carry out of this State in hogsheads any tobacco raised in this State, except in hogsheads which shall have been inspected and passed before this Act goes into operation; and any persons violating the provisions of this section shall forfeit and pay the sum of three hundred dollars, which may be recovered in any court of law of this State, and which shall go to the credit of the tobacco fund; *provided*, that nothing herein contained shall be construed to prohibit any grower of tobacco or any purchaser thereof who may pack the same in the county or neighborhood where grown from exporting or carrying out of this State any such tobacco without having the same opened for inspection; but such tobacco, so exported or carried out of this State without inspection, shall in all cases be marked with the name in full of the owner thereof, and the place of residence of such owner, and shall be liable to the same charge of outrage and storage as in other cases, and any person who shall carry out

of this State any such tobacco, without having it so marked, shall be subject to the penalty prescribed by this section."

We submit that this Act is unconstitutional, because it is a regulation of interstate and foreign commerce, and in contravention of the following provisions of the Constitution of the United States:

ARTICLE I. SECTION 8.

"The Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

SECTION 10. "No State shall without the consent of the Congress, lay any impost or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the Treasury of the United States, and all such laws shall be subject to the revision and control of the Congress."

That this act of 1870, (chapter 291) levies a duty on exports cannot be denied.

The Act of 1872, (chapter 228) prescribes that "the charge of outage shall be two dollars for every hogshead not exceeding eleven hundred pounds, and twelve and one-half cents additional on every hundred pounds over eleven hundred pounds to be paid by the shipper of the tobacco or his agent." The charge for "outage" is a fee paid upon each hogshead when it leaves the warehouse, and varies with the weight of the hogshead and its contents.

The Act of 1870 (chapter 291) provides that no tobacco raised in the State shall be carried out of the State unless inspected, passed and marked in the prescribed manner, except in the cases of the grower or of a purchaser who had packed the same in the county or neighborhood where grown. These last persons were exempted from inspection and other charges save those for "outage."

In all cases, therefore, the charge of outage is exacted by the language of the Act upon all tobacco raised in the State which is taken out of the State. This is then clearly a duty upon exports, and, unless levied by the State in the execution of its inspection laws, contravenes the provisions of the Constitution.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

We contend that this Act of 1870, c. 291, which repealed and re-enacted section 41, of the Act of 1864, c. 346, is unconstitutional.

FIRST.—BECAUSE IT IS CLEARLY A REGULATION OF INTER-STATE AND FOREIGN COMMERCE AND A LAW LEVYING A DUTY UPON EXPORTS, AND IT DOES NOT FALL WITHIN THE CLASS OF LAWS KNOWN AS INSPECTION LAWS, AS IT EXPRESSLY PROVIDES, THAT THE ARTICLES OF EXPORT ARE NOT TO BE INSPECTED.

SECOND.—BECAUSE THE LAW, EVEN IF IT WERE AN INSPECTION STATUTE, IS UNCONSTITIONAL, SINCE IT DISCRIMINATES AGAINST THE NON-RESIDENT BUYER AND MANUFACTURER OF LEAF TOBACCO, AND IN FAVOR OF THE STATE BUYER AND MANUFACTURER, IN THAT IT IMPOSES BURDENSOME REGULATIONS ON TOBACCO INTENDED FOR EXPORT, AND IMPOSES A TAX OF AT LEAST TWO DOLLARS A HOGSHEAD ON SUCH ARTICLE WHEN EXPORTED; WHILE TOBACCO SOLD AND MANUFACTURED WITHIN THE STATE IS FREE FROM SUCH TAX AND REGULATIONS. THIS DISCRIMINATION IS CLEARLY AGAINST INTER-STATE AND FOREIGN COMMERCE IN TOBACCO, AND IN FAVOR OF LOCAL MANUFACTURERS, AND THE INTERNAL TRADE OF THE STATE OF MARYLAND.

THIRD.—BECAUSE IT DISCRIMINATES BETWEEN DIFFERENT CLASSES OF EXPORTERS OF THE SAME ARTICLE OF COMMERCE. THE ACT OF 1870, C. 291, PERMITTING TOBACCO EXPORTED BY PERSONS WHO GROW THE SAME, OR WHO PACK IT IN THE COUNTY OR NEIGHBORHOOD WHERE GROWN, TO BE EXPORTED, WHEN

MARKED WITH THE FULL NAME AND RESIDENCE OF THE OWNER, WITHOUT INSPECTION OTHER THAN THE EXAMINATION OF THE OUTSIDE OF THE HOGSHEADS; WHILE EXPORTERS OF ANOTHER CLASS MUST HAVE THE CONTENTS OF THEIR HOGSHEADS SUBJECTED TO RIGOROUS EXAMINATION.

We come, therefore, to the question: Is the Act valid as an inspection law?

What is an inspection law? What are the purposes and objects of such a law? "The object of inspection laws is to protect the community, as far as they refer to articles imported, from fraud and imposition, and in relation to articles destined for exportation, to preserve the character and reputation of the State in foreign markets." Clintsman vs. Northrop, 8 Cowen, Rep. 45, 46. "The object of an inspection law is doubtless to ascertain whether the merchandise is fit for commerce, and to protect the community from fraud. In the Act we are now considering we can perceive no impost duty nor tax, nor any benefit resulting to the State, except to protect its citizens from goods that are unfit for commerce, and the fees allowed to inspection officers are only a remuneration for their services."

State vs. Fosdick, 21 La. An. 356.

"INSPECTION—Lat. *inspicere, to look into.* The examination of certain articles, made by law subject to such examination, so that they may be declared fit for commerce. The object of the law is to protect the community from fraud, and to preserve the character of the merchandise abroad."

Bouvier Law Dic. Art. Inspection.

CHIEF JUSTICE MARSHALL, in the opinion delivered in the case of Gibbons vs. Ogden, 9 Wheat, 203, says: "That inspection laws may have a remote and considerable influence on commerce will not be denied; but that a power to regulate commerce is the source from which

the right to pass them is derived, cannot be admitted. The object of inspection laws is to improve the quality of articles produced by the labor of a country, to fit them for exportation, or it may be for domestic use. They act upon the subject before it becomes an article of foreign commerce, or commerce between the States, and prepare it for that purpose."

We shall examine each of the objections to the constitutionality of the act in question.

FIRST. IT IS CLEARLY A REGULATION OF INTER-STATE AND FOREIGN COMMERCE AND A LAW LEVYING A DUTY UPON EXPORTS, AND DOES NOT FALL WITHIN THE CLASS OF LAWS KNOWN AS INSPECTION LAWS, AS IT EXPRESSLY PROVIDES THAT THE ARTICLES OF EXPORT ARE NOT TO BE INSPECTED.

The only provision in the Act of 1864 which makes this a compulsory inspection law is the section 41, as amended by the act of 1870, c. 291. If it were not for that section the entire system of inspections would be voluntary.

As construed by the Court of Appeals of Maryland this section required the plaintiff in error, before exporting his tobacco, to do the following things:

(1.) To bring the same, when packed in the county or neighborhood where grown, to the State warehouses in the city of Baltimore, there to permit the State Inspector to examine the outside of the hogsheads to see that the hogsheads did not exceed "fifty two inches in length of staves and forty-six inches in the whole diameter within the staves," and to ascertain whether the name and residence of the owner was marked on the hogshead.

(2.) To pay two dollars on each hogshead *before* exporting the same from the State.

The only "inspection" is the superficial examination

of the hogshead to ascertain its size and determine whether the name and residence of the owner was marked thereon. The law expressly provides that tobacco packed as this was by the plaintiff in error in the county of its growth shall not "be opened for inspection," and shall be exported "without inspection," but it shall be subject to the burdensome regulations of transportation to a State warehouse in the city of Baltimore, and to a tax or "outage" charge of two dollars per hogshead before inspection.

The purpose of an inspection law is, therefore, to ascertain whether the article is fit for market, and the mode of ascertaining that fact is to have the same examined by an official of the State, who is charged with the duty of inspecting the article that is to be exported, and determining whether the article comes up to the standard prescribed by the State. The inspector must examine and inspect, otherwise how can he determine whether the article is deleterious and unsound, or unmerchantable, or unfit to be exported to foreign countries?

This law expressly provides that the article in question shall not be *inspected*, and after so providing then requires the uninspected article to pay a duty in the shape of outage.

What, then, do the inspection laws of Maryland require? Under the existing law, as interpreted by the Court of Appeals, all tobacco intended for exportation, the growth of the State, must be brought to the State tobacco warehouses, situate in Baltimore. Such tobacco, if exported by the grower or person who packed it in the county or neighborhood where grown, is not required to be opened and examined by the inspecting official, but he is to ascertain whether it conforms to the requirements of

the law as to size of hogshead, whether it is the true growth of the State, whether it is packed by the grower or purchaser in the county or neighborhood where grown, and whether it is marked with the name in full of the owner and his place of residence. As a compensation for these services the charge of outage is imposed.

In the performance of none of these duties is the inspector required to ascertain the quality of the article in the package.

This Act of 1870 does not provide for inspecting or examining the article that is to be exported; but, on its face and in express terms, provides that the article shall be exported out of the State "without inspection." If the State of Maryland should provide that every box of dry goods that was carried out of the State should pay a tax of two dollars a box to the State Inspector by way of outage charge, and then provide that the box when marked in a particular way with the name in full and residence of the owner might be carried out of the State "without inspection," can any one believe that such a law would be termed an inspection law, and would not be in contravention of the inhibition of the United States Constitution, which forbids the levying of export duties by the State upon articles exported therefrom.

The act, as interpreted by the Court of Appeals, does require the grower of tobacco, who has already marked the hogshead with his name and residence, to bring the same to the State tobacco warehouse in order to permit the tobacco inspector to look at the outside of the hogshead and see whether the same is of the dimensions prescribed by the act, and therefore the act is clearly unconstitutional, and in no just sense of the term can be held to be an inspection law. It is a regulation of commerce, and an unjust and an odious regulation. It imposes

clearly a duty upon exports, and it accomplishes not one of the purposes of an inspection law. To recur to our illustration, if the Legislature should require that every manufacturer of dry goods should bring the same to a State warehouse only to let the inspector see whether he had marked his name and place of residence upon the box of goods, and to see whether that box was of certain prescribed dimensions; and should further provide that such a box, when exported from the State, was liable to an outage tax, in other words, to an export duty of two dollars a box, could such legislation be defended upon the ground that it was a proper exercise of the power to pass inspection laws? The goods are not to be inspected, the inspector has to do nothing in regard to them to ascertain their character or even their quantity, nor is he to know what goods are in the boxes. All that he is to know is the size of the box and whether the owner has properly spelled his name and stated truly his place of residence thereon. Such regulations are surely regulations of commerce. Such a tax is surely a duty upon exports. The argument is, however, that as the article is tobacco and not dry goods, and the casing is a hogshead and not a box, such regulations would be a proper exercise of the power to pass inspection laws. The simple statement of such a proposition is its best refutation.

It is admitted that if the owner pack unmerchantable or unsound tobacco in his hogshead, and the same be exported to foreign countries, he has then committed no offense. No protection is afforded against the exportation of deleterious and improper or trashy tobacco, but the State contents itself upon this theory with simply seeing that the name and place of residence are written upon the hogshead, and that the hogshead is of

a certain size. And when its official has performed this arduous task, he is said to have "inspected the tobacco," and the law which enables him to look at the outside of the hogshead and spell the name of the owner and his place of residence, is termed an inspection law. The grower of such tobacco may pay his outage tax and haul the tobacco to the door of the State warehouse, call the inspector to look at the hogshead, and then export the same to a foreign market and palm off a worthless material as Maryland tobacco; and he receives assistance from the State of Maryland in the perpetration of the fraud because he has thus passed the ordeal of the vigorous and severe inspection laws established by the State.

We may very well contrast this so-called modern system of *superficial* inspection, by looking at the outside of the hogshead, with the earliest inspection law found upon the statute books. The act of 1640, chap. 10, provided for the "VIEWING" of tobacco by "*sworn viewers*."

"Bad Tobaccos were to be judged, Ground Leaves, Second-Crop Leaves, notably Bruised or Worm-eaten, or Leaves House-burnt, Frost-bitten, Weather-beaten in the House, Sooty, Wet, or in too high Case, *so that the viewer, upon his conscience*, might reasonably think that it was not likely to last sound till Midsummer following."

The inspector, according to the theory we have been considering, is no longer required to examine the quality of the tobacco, but his duties are performed when he looks at the size of the hogshead and the mode in which the name is written thereon. Evidently our modern inspector is not supposed to possess that "conscience" which seems to have been a requisite qualification in the old colonial "viewer."

But the Court of Appeals answers this argument in this

manner. We cite the opinion of JUDGE ROBINSON, pp. 10, 11, Record.

"And this brings us to the second question—whether the charge of outage is in contravention of the Constitution of the United States, which prohibits any State from levying a tax on imports or exports, except so far as such tax may be absolutely necessary for the execution of its inspection laws. And this question resolves itself into this: Whether this charge of outage is an inspection duty within the meaning of the Constitution. If it is an inspection duty then it is no objection to the duty itself, because it partakes of the nature of a tax on exports.

In considering the power of a State to pass inspection laws under this clause of the constitution, Chief Justice Marshall says: "If it be a rule of interpretation to which all assert that the exception of a particular thing from general words proves that in the opinion of the lawgiver the thing excepted would be within the general clause had not the exception been made, we know of no reason why this general rule should not be as applicable to the constitution as to other instruments * * * The exception was made because the tax would otherwise have been within the prohibition."

We come then to the question whether the charge of outage is an inspection duty. It is urged on the part of the appellant, that under the Act of 1864, as modified by the Act of 1870, the only duty to be performed by the inspector in this case was an examination of the hogshead to ascertain whether it was of the proper dimensions, and to ascertain further whether it was packed by the appellant as grower in the county or neighborhood where it was grown; and that the charge of outage under such circumstances is not an inspection duty within the meaning of the constitution.

The object of inspection laws ordinarily is to improve the quality of the productions of the country, and thereby better fit them for domestic use or for exportation. But we are by no means prepared to concede that the inspection must be confined to an examination of the article itself. To prepare the products of a State for exportation it may be necessary that such products should be put in packages of a certain form and of certain prescribed dimensions. This may be necessary either on account of the nature and character of such products or to enable the State to identify the products of its own growth, and to furnish the evidence of such identification in the markets to which they are exported.

In the brief filed by the Attorney-General he has industriously collected the several statutes of the States on this subject, and it appears from the earliest period of the government that nearly every State has prescribed by law the size, form and weight of packages containing articles grown or produced by such States, and has made the size and weight of such packages subject to inspection. Many of these statutes are referred to by Mr. Emmet in his argument in the celebrated case of Gibbons vs. Ogden, 9 Wheaton, 120; and in delivering the opinion of the court in that case Chief Justice Marshall nowhere intimated that such statutes are not a valid exercise of legislative power.

We must conclude, therefore, that the State had the power to prescribe the dimensions of the hogshead in which tobacco raised in this State is packed, and to require such hogshead to be delivered at one of the State tobacco warehouses in order that the inspectors may ascertain whether it conforms to the requirements of the law, and whether it is the true growth of the State and packed by the grower or purchaser in the county or neighborhood where it was grown; and that the charge of outage, to reimburse the State for the expenses there incurred, and in consideration of storage of such hogshead of tobacco, is in the nature of an inspection duty within the meaning of the Constitution of the United States.

These propositions of the opinion of the Court of Appeals may be stated as follows:

First. That the tobacco law is valid as an inspection statute, since it prescribes the maximum size of the hogshead, and requires the same to be taken before an inspector to ascertain whether it is of proper size, because—

(*a*) Of the nature and character of tobacco; or

(*b*) To enable the State to identify the tobacco as the growth of Maryland, and to furnish evidence of such identification in foreign markets.

Second. That several of the States have in their inspection laws prescribed the size, form and weight of packages containing articles, and made such size and weight subject to inspection, and many of these statutes

The second argument of the Court of Appeals is based upon legislative usage. Several of the inspection statutes of the States undoubtedly prescribe the size and form of packages, but it will be found on careful examination of those inspection statutes which were cited by Mr. Emmett in his argument in the case of Gibbons vs. Ogden, as well as of the statutes referred to by the learned Attorney-General in his brief, that they provide always for an examination of the quality and character of the article, and that the provisions providing for size, are, as a rule, for the purposes of convenience in inspecting the quality of the article of sale or export.

It is necessary, if products are to be inspected, that they should be put up in such shape that the State official can by an easy and simple investigation ascertain the character of the contents, and it will be found that these provisions of the several laws in regard to the size and shape are purely subsidiary to the inspection of quality. They are only adopted with a view to enable the inspectors to perform services which they are authorized to perform; namely, to ascertain the quality and character of the article, and to mark the same accordingly. Unless there was some provision fixing the size of the packages they might be so put up that it would be practically impossible for an inspector by reasonable efforts to ascertain the quality of their contents.

For that reason the form of package is frequently prescribed for the purpose of easy inspection and convenient handling. It is certainly a strange course of reasoning to infer, that an inspection statute is valid, which simply retains those provisions that are ancillary to inspection of quality, while carefully prohibiting such inspection of quality altogether.

It is a *non-sequiter* to hold, that because a provi-

sion of an inspection statute prescribing the size and form of the package in order to enable the inspector to easily examine its contents to ascertain their quality, is a valid regulation, that the same regulation by itself would be valid in a statute which provides that the article shall not be "opened for inspection," and shall be carried out of the State "without inspection."

The Court of Appeals then has decided, that a law which prescribes the size of the package in which an article is exported, and which does not require the quality or contents to be ascertained, is a valid inspection law.

This regulation of form of package, size, &c., may be necessary according to this decision :

1. On account of the nature and character of such products, or

2. To enable the State to identify the products of its own growth, or

3. To furnish the evidence of such identification in the foreign market.

In answer to these positions assumed by the Court it is submitted that an act merely requiring that beef, pork, flour or fish should be exported in barrels, tobacco in hogshead, and lard and butter in kegs or firkins, would not be an inspection law. There is no necessary relation between the form of a package and the quality of its contents. A purchaser does not form any opinion of the quality of merchandise because he sees the customary package. He may be aided by certain familiar brands, symbols or marks, placed thereon by the manufacturer or inspector, and may purchase relying upon these; but he surely does not buy pork because it is packed in a barrel, or butter because it is in a cask.

As to the second reason given by the court, it may be said, that however much a State may seek "to identify

the products of its own growth," it is not very materially assisted in this desire—if the object is tobacco—by seeing its offspring encased in a hogshead. Especially is this vain where the officer looking thereat is not authorized to place any brand for future identification upon it.

The Act of 1870, ch. 291, does not require any "evidence of such identification" to be furnished to the inspector, or placed upon the package. It provides that "such tobacco, so exported or carried out of this State without inspection, shall in all cases be marked in full with the name of the owner thereof, and the place of residence of such owner." This is the sole mark required. The other provisions for marking, to be found in the inspection laws apply only to tobacco which is inspected. When the full name of the owner and place of his residence are marked upon the hogshead, these give no information as to quality or place where the article is grown. The owner may be a resident of any State or country. He may be any person who can acquire title to personal property. If a grower, he is not required to put this designation upon it even, but merely marks it as owner.

We submit also, that a law cannot be said to "prescribe the dimensions of the hogshead" when the limits are so elastic as those given in the inspection law. The Act of 1872, c. 36, section 26, provides: "That no tobacco of the growth of this State shall be passed or accounted lawful tobacco, unless the same be packed in hogsheads not exceeding fifty-four inches in the length of the staves, nor exceeding forty-six inches across the head, and the owner or his agent of tobacco packed in any hogshead of greater dimensions, shall repack the same in hogsheads of the size herein precribed at his own expense before the

same shall be passed." The dimensions of the package may be any size under those designated.

In order, however, to fully answer the position taken by the Court of Appeals and Attorney-General, it is necessary for us to examine a little more closely the character of the power under which inspection laws may be passed by the several States.

Following the clear implication of the decision of Gibbons vs. Ogden, this court has distinctly affirmed the doctrine that the power to pass inspection laws is one of the police powers reserved to the States under the constitution, and the correctness of this classification cannot be questioned.

It is conceded that the exercise of a State's police power, which directly affects inter-State or foreign commerce, must be reasonable, and if an alleged inspection law is not a reasonable and proper exercise of that power, it does not fall within the constitutional reservation. The question whether a particular act of legislation is a reasonable exercise of the police power, must depend upon how far it is adapted to carry out the purposes and objects of that power.

Therefore we must inquire:

First. What are the purposes and objects to be attained by the exercise of this power to inspect merchandise intended for exportation?

Second. How far is the Maryland Act adapted to attain such purposes and objects?

The scope of the State's police power is too extensive to permit of definition, but its nature and object are expressed in the maxim, *Sic utere tuo ut alienum non laedas.* It is the power that keeps the peace, that restrains one citizen from injuring the person or property of another. Its distinguishing feature is restraint or pre-

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vention. The taxing power and the eminent domain compel the citizen to use his property or to give it up for the public benefit. The police power *restrains* him from using his property to the *injury* of his fellow-citizen—*ut alienum* (*vel alium*) *non laedas.* Whatever its form, a police regulation is a protective measure. Police power, as thus defined, does not include taxing power or eminent domain.

Every inspection law is a police regulation, but every police regulation is not an inspection law.

What feature distinguishes inspection laws from other police regulations? *Ex vi termini*, an *inspection* law must deal directly with some object to inspect. Since an inspection law is a police regulation, its aim must be the prevention of injury that may arise from the object inspected, since it deals directly only with that object. There are laws for the inspection of steam boilers, whose aim is clearly the prevention of injury.

We have to do only with laws for the inspection of merchandise. Inspection laws, then, aim at the prevention of injury that may arise from merchandise. The injury must be such as may be prevented by inspection and by preventing the use as merchandise of the article inspected, or by making known the character of the article, as ascertained by inspection. That is to say, the injury to be prevented is the *fraudulent* use of the article inspected. Accordingly the titles of many of the earlier inspection statutes recite the prevention of fraud as the end to be attained by their enactment.

For example, the Rhode Island statute begins "An act for the prevention of fraud in the sale of charcoal, wood and hoop-poles;" the Maryland act of March 10, 1862, is entitled "An act to regulate the inspection of wheat, flour,

and corn meal in the city of Baltimore, and *to prevent frauds on purchasers.*"

An inspection law, then, may be defined as a police regulation to prevent fraud by means of the subject matter, in commercial transactions.

It is important to note the distinction between *prevention* worked by an inspection law and the *remedy* furnished by suit The inspection law acts directly upon and removes the means of fraud; the suit acts directly upon the perpetrator of the fraud, and compels him to make amends. The distinction is parallel to that between abating a nuisance and granting damages for its continuance.

In Patterson vs. Kentucky, 97 U. S., 501, this Court had before it a law for the inspection of illuminating oils. On pages 503–4 the Court classifies that law, and concludes that it is strictly a police regulation.

In Webber vs. Virginia (103 U. S., 348), this Court, per FIELD, JUSTICE, said: "Congress never intended that the patent laws should displace the police powers of the States—meaning by that term those powers by which the health, good order, peace and general welfare of the community are promoted." This definition includes the taxing power and the eminent domain. If for "promoted" we read *protected*, we have a definition of what are more commonly known as police powers. In other words, to require a man to use his property to promote the general welfare, is an appropriation of that property to the public use; to require a man not to put his property to a use contrary to the general welfare, is not an appropriation but a restriction. "The power only extends to a just regulation of rights, with a view to the due protection and enjoyment of all, and does not deprive any one of that which is justly and properly his own."—Cooley Const.

Lim., Sec. 575. Many State inspection laws provide a penalty or forfeiture of goods where they are found unmerchantable. Such penalties and forfeitures can escape constitutional prohibitions only upon the ground that unmerchantable merchandise is a *nuisance—Cooley Constitutional Limitations, Sections 594, 595, 596, 597.*

The object of inspection laws is the prevention of *fraud* in commercial transactions. Many of the early acts, as we have shown, recite this expressly as the end to be attained by their enactment; the whole framework of these statutes bears witness that such is their object. Fraud is to be prevented in sales of merchandise for home consumption as well as in sales for exportation: and accordingly, in every State these statutes provide for the inspection of articles intended "for *sale or* exportation," or simply of articles "exposed for sale." No distinction is made between sales for consumption and sales for exportation, for the obvious reason that the injury to be prevented is the same in both cases.

It is self-evident that the only species of commercial fraud that can be prevented by the inspection of merchandise, is fraud in the subject-matter of commercial transactions. What the subject-matter of such a transaction is, must depend upon the intention of the parties, no doubt; but the terms used by the parties, except when dealing with specific chattels, must be interpreted in the light of the usages of merchants in that trade in which the transaction takes place. It is with reference to such usages of trade that all inspection laws are enacted, and must be interpreted. For instance, there may be no reason in the nature of things why tobacco should not be sold by the bushel, but the fact remains that merchants do not measure tobacco by the bushel; and it would be absurd

to interpret a tobacco inspection law with reference to such possible usage.

In order to see more clearly what frauds may be perpetrated in regard to this subject-matter of a commercial transaction; *i. e.*, what frauds an inspection law is intended to prevent, let us take a simple example—a sale of so much of a given commodity, for instance. In such sale the law implies a warranty on the part of the seller that the subject-matter shall be of a quality regarded as merchantable in the trade. It is a fraud upon the buyer under the contract, to sell him an article that has not merchantable quality. The buyer has his remedies under the contract; but the State, by virtue of its police force, can do somewhat to prevent such a fraud *ab initio*, and for the purpose of such prevention requires that such articles of trade shall be inspected, and if not of merchantable quality shall be branded as unmerchantable.

Goods in the hands of an owner who intends to export them for sale or consumption elsewhere are equally likely to be the means of fraud, and are, therefore, subjected to inspection to prevent fraud *ab initio*.

Again, to return to our supposed sale: if the amount of the commodity is to be ascertained, and the price determined by weighing or measuring, a fraud may be committed by giving light weight or short measure. This, however, is not such a fraud as can be prevented by inspection, not being in the subject-matter. But where, by the usage of trade, an article is universally put up in packages of a fixed quantity, will not light weight or short measure of the article in those packages be likely to prove the means of fraud? and may not this fraud be prevented by inspection? Take, for instance, a barrel of flour. By usage it should contain 196 pounds of flour. The ordinary buyer for consumption regards the barrel of flour as

a distinct entity; he buys a "barrel of flour" and not an indefinite weight of flour in a barrel. Such, too, is largely the usage in trade. In the inspection laws the Legislatures have adopted the popular view; *i. e*, these acts regard the subject-matter to be inspected as barrels of flour and not as flour in barrels. Hence, that a barrel contains 196 pounds of flour is one of the qualities to be passed upon in determining its merchantability. The same reason applies to barrels of beef, pork and fish, and to all packages whose size or weight is fixed with a view to secure *full weight and full measure.*

The provisions in inspection laws, which require barrels and other packages to be made of named materials, and in a workmanlike manner, may possibly be due in part to the view taken by the legislatures of the subject-matter, as above explained. However, these provisions may more reasonably be classed with those subsidiary to inspection of the subject-matter, but necessary to it.

Since the Attorney-General and the Court below seem to lay much stress upon these last-mentioned provisions, it is necessary to discuss their nature and import.

These provisions relate to the construction of packages, first, as to materials and workmanship; second, as to size and shape.

1st. As to materials and workmanlike construction of packages.

It is evident that there is no use in inspecting the quality and weight of a perishable article, if its casing exposes it to damage and to loss of weight. The present provisions then are to aid inspection and to insure its results. They are subsidiary to inspection of quality. This view is confirmed by the fact that we find them in reference only to articles easily damaged, such as flour, &c., and to packages containing liquids, such as pickled beef, pork and fish, wines, &c.

2d. As to size and shape of packages.

Provisions as to size are of two kinds. In the one kind, the object is to measure the cubic contents of the package, in cases where the cubic contents is one of the qualities to be inspected in the subject-matter. This object may be attained directly by requiring that the cubic contents shall be so much, measured in gallons or otherwise; or indirectly by requiring a given length of staves, a given diameter of head and a bulge of a given number of inches. This last method incidentally fixes the shape, also, but it is the obvious and exact method. This first kind of provision as to size is parallel to that requiring 196 pounds in a barrel of flour, as explained above.

The second kind of provisions as to size consist in a mere limit upon the size or contents of a package. They provide that the package in which a given article is offered for inspection shall not exceed a certain size or contents. A glance at the provisions in reference to the mode of inspection, and as to what shall be deemed a sufficient inspection, will show the necessity for such limits. Limits would be necessary if only to fix inspection fees. Moreover, it is obvious that what would be sufficient examination to determine the quality of a package of given size would not be sufficient in regard to a package of twice that size. Where the inspector is required to repack or recondition the need of such limits is again shown.

The provisions as to shape rest upon the same ground. The shape is often determined incidentally by provisions as to size. Where it forms the subject of an independent regulation, such regulation always bears reference to the mode of inspecting the given article. This will clearly appear by a comparison of the provisions as to shape and as to modes of inspection respectively. For instance, a barrel of flour is inspected by boring from end to end, and

by sampling along that line. If there were no regulation as to length of barrel or as to extent of bulge, the inspector could neither bore with ordinary tool, nor after boring obtain sufficient sample of the bulk.

These provisions, then, (the second kind as to size and those as to shape,) are mere subsidiary regulations to facilitate inspection. The inspection acts themselves show them to be such, and upon principle they can be nothing more; for in no way can they tend to prevent fraud in merchandise except by facilitating inspection of quality. An act forbidding sellers or exporters to use gallon or bushel measures of contents *greater* than 231 cubic inches and 2150.42 cubic inches respectively, could hardly be construed as an act to prevent fraud in articles sold or exported.

Now, with the exception of provisions regulating the duties of inspector, upon which no question arises, we have reviewed by classes all the provisions found in the typical inspection law.

We submit that these provisions show upon their face that the object and intent of inspection laws is the prevention of fraud in the subject-matter of commercial transactions. This same conclusion has already been reached by reasoning from the nature of inspection laws as an exercise of the State's police power.

How far is the present Tobacco Inspection Law of Maryland adapted to attain the objects and intent of an inspection law?

We have seen that the object and intent of an inspection law must be the prevention of injury arising from the nature of articles of trade, or as stated above, the prevention of fraud in the subject-matter of commercial transactions. The requirements dealing with the subject-

matter, as the Maryland law is interpreted by the Court of Appeals, are:

1st. That tobacco shall be true growth of the State.

2d. That it be packed by grower or purchaser in the county or neighborhood where grown.

3d. That it be marked with the name in full of the owner thereof, and the place of residence of such owner.

4th. That it be *not* packed in casks "*exceeding* 54 inches in length of the staves and 46 inches in the whole diameter within the staves across the head."

Can any one or all of these provisions prevent fraud in the subject-matter in any degree?

1st. It cannot be maintained that the fact of tobacco's being the true growth of Maryland shows it to possess any qualities whatever. A State extending from the mountains to the sea may and does raise tobacco of every imaginable quality.

2d. The fact that tobacco is packed in the county or neighborhood where grown proves still less. Moreover, what that county or neighborhood is does not appear upon the hogshead.

3d. The owner whose name and residence are to appear upon the hogshead is presumably the owner at the time of the so-called inspection. He must, by construction, also be the packer. The utter futility of this provision has already been shown.

4th. That tobacco is to be packed in the hogsheads "not exceeding fifty-four inches in length of staves and forty-six inches across the head," certainly in no way protects the dealers therein from frauds or imposition.

It is manifest, therefore, that this law is not an exercise of the police power to prevent frauds in commercial transactions by making specific regulations as to the subject-matter thereof.

This whole argument of the Court of Appeals, derived from legislative usage, and from the fact that many inspection statutes were called to the attention of this Court in Gibbons *vs.* Ogden, and, according to the argument of the Attorney-General, received its tacit approval, is fallacious. Chief Justice Marshall does not pretend to examine each and all of the provisions of the various State statutes that were cited. The particular provisions of such statutes, especially if dissociated from any inspection of quality, were not considered by either court or counsel. It was admitted that the States have the right to pass inspection laws which might affect foreign and inter-state commerce to a certain extent, and Mr. Emmett contended that the right to pass such inspection laws came from the power in the State to regulate commerce. Chief Justice Marshall answers that this right of enacting such statutes flows from the same source as the right to pass sanitary and health and quarantine laws, and others of that character, and not from the power to regulate commerce. The contest, simply, was as to the source of the right to enact inspection statutes, and not as to the validity of special acts or provisions of such acts, assumed to be passed in the general exercise of the right or power. Do inspection laws flow from the power to regulate commerce, is the question? No, answers the Chief Justice in substance; they flow from that same power which prevents the spread of disease and protects the health of a people; that is, the police power of the State.

It is certainly, therefore, an unauthorized inference to draw from such a discussion that this Court gave its sanction to all the provisions of the many inspection laws which were thus brought to their attention. One of the acts cited by Mr. Emmett, that of Virginia, prohibiting the sale of goods of *foreign* manufacture or *growth*, by

any *unlicensed* merchant, is certainly unconstitutional upon the principles settled in Brown vs. Maryland, Cook vs. Pennsylvania, and Welton vs. Missouri. We have devoted more time and space to the examination of the characteristic provisions of the inspection laws of the States than the strength of the argument, from their existence, deserves. The simple answer is that none of those laws have ever yet been brought to the test of a judicial examination, and until they are tested by exception to their constitutionality, the argument from their existence wants much of the force attributed to it.

II.

We maintain, however, that the law of Maryland is unconstitutional, because it discriminates between her State buyer and manufacturer of leaf tobacco, and the purchaser who buys the same for the purpose of transporting it to another State or foreign country for the purpose of manufacture.

As it now stands, the statute gives a premium to the State manufacturer of leaf tobacco. Tobacco is manufactured in the city of Baltimore and elsewhere in the State.

The dealer in Maryland can purchase his tobacco in the counties and take the same to his manufactory in Maryland without being required to first carry the same to the State warehouse and there pay two dollars a hogshead tax for the purpose of having the same inspected. The State commerce in tobacco is entirely unfettered, and is free from the burden of this heavy tax. The inter-state and foreign commerce in tobacco is subjected to this tax and also to the regulations requiring the tobacco to be carried to a State warehouse at Baltimore

before it can go out of the State. Is it not manifest that the manufacturer within the State, by reason of these regulations and tax upon extra-state commerce, has an advantage over the manufacturer without the State? The grower of tobacco must pay a tax of two dollars a hogshead if he sells his tobacco to be manufactured out of the State; he is exempt from this tax if he sells it to be manufactured in the State. Is not a law which thus discriminates in favor of the internal trade of the State and against its foreign commerce in the same article clearly unconstitutional? It matters not whether the statute is a license or an inspection law; if it thus discriminates it is invalid.

This principle is well settled by the decisions of this court in the cases of Welton vs. Missouri, 91 U. S., 275, and Webber vs. Virginia, 103 U. S., 344. In the first case a license of the State of Missouri was held unconstitutional, because it required persons selling goods, the growth or manufacture of other States, to pay a license tax, while it required no such payment from persons selling goods which were the growth or product of Missouri. It was admitted that the States have the most ample power to impose taxes in the way of licenses; they can select the particular calling or particular merchandise which is to be the subject of the license and tax; they can provide that the seller of agricultural implements must take out a license and pay a tax, while the seller of dry goods is exempt from such requirements; but while this power is so ample, and its exercise entirely within the discretion of the State Legislature, yet it cannot be exercised so as to discriminate against the seller of goods not the product of the State; the sellers of such goods and the sellers of domestic manufacture must be placed

on the same platform and be subject to the same regulations under a license law.

We now claim the application of this established principle to the buyer of goods instead of the seller. A buyer of goods in Maryland, which are to be taken out of the State for manufacture, cannot be subjected to other and different regulations and impositions than the buyer of the same goods for manufacture within the State. If a seller of sewing machines, manufactured without the State of Missouri, can only be subjected to the same impositions and taxes as the seller of sewing machines manufactured in Missouri, why should the buyer of materials for manufacture of such machines at points without that State be subjected to other and different impositions than the buyer of such materials to be manufactured into the finished product within the limits of that State? The State certainly has no more power to discriminate in its inspection laws, between the resident and non-resident buyers and manufacturers, than it has in its license laws to discriminate between the resident and non-resident sellers.

Could Minnesota, to protect the owners of her flouring mills, provide that all wheat the growth of that State, before being carried out of the State, should be taken to St. Paul and there inspected, subject to a certain charge per bushel, while the State manufacturer of flour was exempt from such onerous regulations and tax?

Could Illinois require all corn which was to be manufactured in foreign distilleries to be brought to Chicago and pass the ordeal of an inspection and pay its many charges, while corn used by an Illinois distiller was exempt from the tax and the costly transportation to Chicago? If the Maryland Act is valid, is it not easy for the States, under the guise or form of inspection statutes,

to raise at State lines all the barriers to commerce, which it was the object of the commercial clause of the constitution to break down? "Free trade" among the States is the accepted rule of our internal commerce under our Constitution. Commercially, at least, the States are one, and State lines now have no power over commerce. But how long will this remain if a State can foster its own industries by imposing burdens on those who come within its borders to buy the raw product to be manufactured elsewhere, while its own favored industries are free from such burdens?

How effective, as against a New England manufacturer, could a similar law be made for the inspection of cotton, by the State of Georgia, or some of the other Southern States, where the domestic manufacture of cotton has been lately advancing at rapid strides. Illustrations might be given from the lumber producing States, or the mineral States. But these will suffice to show that such laws, under the guise of inspection statutes, will naturally tend to foster local products or interests at the expense of competing industries beyond the limits of the State that enacts them. We submit, therefore, that upon the principles announced by the Court in *Welton* vs. *Missouri*, and *Webber* vs. *Virginia*, the Tobacco Law of Maryland is unconstitutional.

Woodruff vs. Parham, 8 Wall, 123.
State Freight Tax, 15 Wall., 232.
Welton vs. Missouri, 91 U. S., 275.
Henderson vs. Mayor, &c., 92 U. S., 260.
Railroad Co. vs. Husen, 95 U. S., 465.
Cook vs. Pennsylvania, 97 U. S., 566.
Machine Co. vs. Gage, 100 U. S., 676.
Guy vs. Baltimore, 100 U. S., 434.
Packet Co. vs. Catlettsburg, 105 U. S., 558.
Tiernan vs. Rinker, 102 U. S., 123.
Webber vs. Virginia, 103 U. S., 344.
Mobile vs. Kimball, 102 U. S., 691.
Jackson Mining Co. vs. Auditor General, 32 Mich., 488.

III.

The Act of 1870, chapter 291, discriminates between different classes of exporters of the same article of commerce. It permits the person who packs it in the county or neighborhood where grown to export it upon paying only the outage charge; while it requires other exporters to submit their tobacco to inspection as to quality, and pay different and possibly greater charges.

By the 11th and other sections of the Act of 1872, chapter 36, and the Act of 1872, chapter 228, the inspector uncases and breaks every hogshead of tobacco, when grown in Maryland, in five separate places. Samples are taken out, in certain cases the article is re-packed, various charges for these services are made, and charges for storage are imposed. When the packer in the neighborhood where grown has marked his full name and residence the outage charge is the only charge imposed upon him.

If the object of an inspection law is to ascertain whether a certain article of merchandise is fit for commerce, and if the community is to be protected from fraud, all of that article which is exported should be inspected, and the community should be protected as far possible from fraud. If the reputation of the products of a State is to be established and maintained in the markets of the world, this can only be done by inspecting alike all of the particular article of commerce which is exported.

The law which permits the goods of A to be exported without scrutiny, and requires goods of the same kind belonging to B to submit to inspection, certainly makes a discrimination in favor of one and against the other. This discrimination is odious, because it establishes a

favored class of exporters. When the tobacco has been grown and cured it is fit for commerce; it then can be bought and sold in the domestic market. The inspection law here steps in and says that the grower or person who shall put it into a hogshead in the county or neighborhood where grown, shall have an advantage over other persons. The same article may, if sent by one person or one class of persons, be put upon the market without inspection, while, if the property of another person, it shall be inspected. The law resolves itself into this: Not that certain classes of goods shall be inspected, but the goods of certain classes shall be inspected. In thus making a discrimination it not only affects commerce, but by creating a discrimination regulates inter-state and foreign commerce within the meaning of the commercial clause of the Constitution.

IV.

We maintain, however, that even if we are mistaken in holding the law unconstitutional, because, though called an inspection statute, it does not inspect, but does regulate inter-state and foreign commerce, and imposes a duty on exports, and because it discriminates between the resident and non-resident manufacturers of leaf tobacco in their dealings with the same, and because it discriminates between different classes of exporters—*yet the tobacco inspection system of Maryland, as prescribed by the present laws, is repugnant to the commercial clause of the Constitution, because it requires all tobacco raised in the State of Maryland to be brought to one place—the city of Baltimore—before it can be carried out of the State.*

This provision we regard as so entirely unreasonable that, even if there were no other objections to the law, this alone would render it invalid.

The State of Maryland has established five tobacco warehouses, all located in the city of Baltimore. (*Act of 1864, chapter 346, section 1; Act of 1872, chapter 36, section 1.*) There is no provision for any inspection at any other place, or any other place prescribed for inspection. The law, as interpreted by the Court of Appeals, requires all tobacco, the growth of the State, to be brought to one of these warehouses either to be opened for inspection or to pass the superficial examination of the outside of the hogshead, which we have explained, before any of the tobacco can be exported from the State.

The plaintiff in error, a resident of Charles county, was indicted for not delivering his tobacco *at a warehouse in the city of Baltimore*, there to have it weighed, &c.

Tobacco raised in Worcester county, within a short distance of Norfolk, although it may be sold to a manufacturer there, must be first transported more than two hundred miles to Baltimore, there to pass an examination of an inspector, and then be carried back over the same route to the Norfolk manufacturer. A law which requires this certainly regulates commerce; and it imposes a regulation which is in the highest degree oppressive, and which is not necessary for the purpose of executing a reasonable inspection system. There are many places on the shores of the Chesapeake from which tobacco can be cheaply exported to other States either for shipment to foreign countries or for purposes of manufacture. Yet not a hogshead can be taken to Norfolk, the natural port of shipment for much of the tobacco raised in the State, without being first transported

hundreds of miles to Baltimore. Is such a provision a reasonable exercise of the power to pass inspection laws? Should the State of Ohio pass a law requiring all the flour manufactured in that State to be carried to Cincinnati for the purpose of inspection at that point before it could be taken out of that State, would any court in the land hold such a law valid? If the State of Michigan should require that all lumber manufactured by its citizens must be brought to Detroit for inspection, would such a requirement be a reasonable exercise of the police power of the State to inspect its products in order to prevent fraud in their sale? Could the State of Illinois require all corn to be taken to Cairo, and all beef to Chicago? Could Pennsylvania require all coal to be taken to Pittsburgh, or all petroleum to Harrisburg for inspection before these products could be exported? Do not these instances show that Legislatures must make reasonable provisions for the execution of inspection laws passed by them without unnecessarily burdening foreign or inter-state commerce? If it would not be reasonable to require flour to be carried two hundred miles to Cincinnati, in Ohio, to suit the convenience of a State official, why is it reasonable to require tobacco to be carried two hundred miles in Maryland to gratify the demands of a State inspection law?

Congress has already legislated in regard to foreign commerce in the State of Maryland, providing for certain ports of entry and delivery. The State (by section 2548, Revised Statutes) is divided into three collection districts. Upon examining this section it will be seen that Charles county, where the plaintiff in error resides, and where the tobacco exported by him was grown and packed, is in the district of which Annapolis is the port of entry. A vessel can clear from any port in this dis-

trict upon complying with the regulations requiring delivery of manifest of cargo, &c, to the collector of the district. Yet the plaintiff in error is forbidden to take his article of commerce to one port in the State, and required under pains and penalties to take it to another port. The inspection laws of Maryland thus gives to one city a monopoly in the export of its staple product and prohibits its exportation from any other place. This Court has said, in the Cherokee Cattle cases, 95 U. S., 465, 472:

"While we unhesitatingly admit that a State may pass sanitary laws, and laws for the protection of life, liberty, health or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, &c., from entering the State; while for the purpose of self protection it may establish quarantine, *and reasonable inspection laws*, it may not interfere with transportation into or through the State, beyond what is absolutely necessary for its self-protection. It may not, under cover of exerting its police powers, substantially prohibit or burden either foreign or inter-state commerce. Upon this subject the cases in 92 U. S. to which we have referred are very instructive. In *Henderson vs. the Mayor, &c.*, the statute of New York was defended as a police regulation to protect the State against the influx of foreign paupers; but it was held to be unconstitutional, because its practical result was to impose a burden upon all passengers from foreign countries. And it was laid down that, 'in whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect.' The reach of the statute was far beyond its professed object and far into the realm which is within the exclusive jurisdiction of Congress. So in the case of *Chy Lung vs. Freeman*,

where the pretence was the exclusion of lewd women; but as the statute was more far-reaching and affected other immigrants, not of any class which the State could lawfully exclude, we held it unconstitutional. Neither of these cases denied the right of a State to protect herself against paupers, convicted criminals, or lewd women, by necessary and proper laws, in the absence of legislation by Congress, but it was ruled that the right could only arise from vital necessity, and that it could not be carried beyond the scope of that necessity. These cases, it is true, speak only of laws affecting the entrance of persons into a State; but the constitutional doctrines they maintain are equally applicable to inter-state transportation of property. They deny validity to any State legislation professing to be an exercise of police power for protection against evils from abroad, which is beyond the necessity for its exercise wherever it interferes with the rights and powers of the Federal government * * * The police power of a State cannot obstruct foreign commerce or inter-state commerce beyond the necessity for its exercise; and under color of it, objects not within the scope cannot be secured at the expense of the protection afforded by the Federal Constitution. And as its range sometimes comes very near to the field committed by the Constitution to Congress, it is the duty of the courts to guard vigilantly against any needless intrusion."

The requirement of the State inspection laws, that an article of foreign commerce before exportation shall be transported from whatever part of the State it may grow to one particular place therein for examination by a State official, is certainly a regulation of foreign commerce. "Transportation is essential to commerce, or rather it is commerce itself, and every obstacle to it, or burden laid upon it by legislative authority, is regulation;" such is

the language used by this Court in the Cherokee Cattle case.

The regulations imposed by the Legislature of California upon passengers from a foreign country are examined by this Court in the case of *Chy Lung* vs. *Freeman*, 92 U. S., 276. The statute itself is thus characterized: "It is hardly possible to conceive a statute more skillfully framed to place in the hands of a single man the power to prevent entirely vessels engaged in a foreign trade, say with China, from carrying passengers, or to compel them to submit to systematic extortions of the grossest kind." Under that statute numerous and vexatious regulations were prescribed, bonds were to be taken, sureties obtained, and there was a power given to the official to receive certain fees for taking these sureties, as also to waive the taking of bonds upon a payment to the official. The court says (p. 280): "The statute of California goes so far beyond what is necessary, or even appropriate for this purpose, as to be wholly without any sound definition of the right under which it is supposed to be justified. Its manifest purpose, as we have already said, is not to obtain indemnity, but money."

An examination of the Maryland tobacco inspection laws will show that the object sought is not inspection for the purpose of ascertaining the quality of the article examined, nor preventing fraud, but patronage and revenue. The provisions of the law are simply incomprehensible. The Court of Appeals has decided that the Act of 1864 and the Act of 1872 are both in force. The duties of the officers are vague, their responsibility indefinite, their fees elastic. Onerous regulations as to inspections and storage are imposed, numerous official positions created, salaries fixed for inspectors, clerks, screwmen, laborers of "back gang" and others; then there is a provision that

persons who grow tobacco or pack it in the county or neighborhood where grown shall not have their tobacco inspected, but can commute the indefinite charges, and escape from the vexatious interference by paying a fixed sum under the guise of outage charges.

The necessary and inevitable result of these laws is to harass the producer or dealer, to hamper the trade, and to impose most vexatious restraints upon commerce, while they possess none of the features of reasonable inspection laws.

If these Acts can be held to be valid as reasonable in spection statutes, passed for the purpose of protecting the community from fraud and imposition and preserving the character and reputation of the product in foreign markets, it is difficult to say what impost, duty, or tax may not be levied by a State under color of inspection laws. When it is considered that the enactments by the State of Maryland in reference to tobacco, if constitutional, may be applied by any State Legislature to any article of commerce for revenue purposes, the rigorous application of the well-settled principles of construction of the commercial clauses of the Constitution by this Court is the only safeguard of inter-state and foreign commerce.

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APPENDIX.

Tobacco Inspection Laws of the State of Maryland.

1864—CHAPTER 346.

AN ACT to amend Article Four of the Code of Public Local Laws relating to the leasing of the State Tobacco Warehouses and the Inspection of Tobacco.

Be it enacted by the General Assembly of Maryland, That all the sections of Article Four in the Code of Public Local Laws, under the title of "Tobacco," from section four hundred and ninety-four to section five hundred and fifty-two, relating to Tobacco Commissioners, the leasing of the State Tobacco Warehouses, in the city of Baltimore, and the Inspection of Tobacco, be and the same are hereby repealed, and that the following sections be enacted and inserted in the Code in lieu thereof:

SECTION 1. The Governor, by and with the advice of the Senate, shall appoint, as soon as possible after the passage of this Act, and before the first Monday of February, at each regular session of the General Assembly thereafter, five Tobacco Inspectors, one for each State Tobacco Warehouse in the city of Baltimore, whose terms of office shall respectively continue until their successors shall qualify; *provided*, that the successors of the present Governor in appointing inspectors as aforesaid shall select four of them from the tobacco-growing counties of the State, no two of whom shall be selected from the same county.

SEC. 2. *Be it enacted*, That each of said Tobacco Inspectors, before proceeding to act, shall take and subscribe before the Clerk of the Superior Court of Baltimore city, an oath or affirmation that he will faithfully, to the best of his ability, without fear, favor or partiality, discharge all the duties of Tobacco Inspector, and shall also give bond to the State of Maryland in the penalty of thirty thousand dollars, with at least two securities, to be executed in the presence of, and attested by said clerk, and approved by the Comptroller, conditioned for the faithful performance of all his duties as Tobacco Inspector, and lodge the same, with the approval of the Comptroller endorsed thereon, with the clerk of said court, whose —— it shall be to record the same, and a copy thereof, under the seal of said court, shall in all suits on said bond be good and sufficient evidence thereof, and of its execution by all the parties thereto.

SEC. 3. *Be it enacted*, That any person or persons on filing a declaration, stating in general terms his, her or their ground of action against any Tobacco Inspector as such, may require a writ or writs, in the name of the State as plaintiff, endorsed to the use of such person or persons, to be issued against any such Tobacco Inspector and the sureties on his bond, accompanied with a copy or copies of such declaration, to be served with said writ or writs on the defendants, and may in such suit recover judgment for such damages as he, she or they may show him, or herself, or themselves, to have suffered by reason of any malfeasance, misfeasance or neglect of duty on the part of such Tobacco Inspector, together with the costs of suit, and in any such suit any of the proceedings may be amended as in other cases.

SEC. 4. *Be it enacted*, That any of the parties to said bonds may be sued theron in the counties where they severally reside.

SEC. 5. *Be it enacted*, That each of said Tobacco Inspectors, as soon as possible after qualifying, shall take charge of the warehouse to which he may be appointed, and of

all the tobacco, books, furniture, implements, appurtenances and effects found therein, and shall receipt to his predecessor therefor, and shall employ such clerks and laborers, provide and keep on hand such books, implements and materials as may be necessary for the economical and effective discharge of his duties as such inspector. The chief clerks of the respective tobacco warehouses shall receive each twelve hundred dollars per annum, the receiving and shipping clerks shall receive each nine hundred dollars per annum, the weighing clerks shall receive each nine hundred dollars per annum, the screwmen two dollars per day, and the laborers of back gang one dollar and fifty cents per day, all of which shall be paid by the inspectors from the receipts into their respective offices. The inspectors shall at no time employ more labor than is necessary for the effective performance of the work to be done, and in his quarterly returns to the Comptroller of the State each Inspector shall state the average number of screwmen and laborers employed in his warehouse during said quarter, and amount of compensation paid them and the several clerks in his employment.

SEC. 6. *Be it enacted*, That each Tobacco Inspector shall have charge and control of the wharf in front of the warehouse to which he may have been appointed, as far as is necessary to facilitate the landing of tobacco thereat, or the removal of tobacco therefrom, and any master or owner of any vessel in front of such warehouse not having any tobacco on board who shall refuse or neglect to remove his vessel upon the request of such Tobacco Inspector or his clerk, in order that a vessel having tobacco on board may land the same, or that a scow or vessel may receive tobacco therefrom, shall pay a fine of not less than five nor more than twenty dollars, to be recovered before any Justice of the Peace of the city of Baltimore, for the use of tobacco fund.

SEC. 7. *Be it enacted*, That each of said Tobacco Inspectors, and persons employed by him as aforesaid, shall, unless prevented by sickness or unavoidable accident, occupy ten

hours every day, except Sundays and holidays, in the actual and personal discharge of his particular duties under this Act.

SEC. 8. *Be it enacted*, That if any Tobacco Inspector shall be prevented, except by sickness or unavoidable accident, from attending at the warehouse to which he is appointed, he shall designate some competent and proper person to act as his substitute, who shall be compensated out of the salary of said Tobacco Inspector, and for whose acts the said Inspector and his bond shall be liable, and his salary shall cease during the time he is so absent; provided such absence exceeds six days at any one time.

SEC. 9. *Be it enacted*, That all the tobacco landed or delivered at any of the warehouses in the city of Baltimore for inspection, shall be taken charge of by the inspector appointed to said warehouse, who shall be responsible therefor, and who shall upon demand give his receipt therefor to the person delivering the same; and if he refuses to take charge of any such tobacco, or to give his receipt therefor when required, he shall be liable to a penalty of one hundred dollars, to be recovered in any court of law in this State, without prejudice to the right of action upon his official bond, as hereinbefore provided; *provided*, that no inspector shall be required to take charge of such tobacco if his warehouse be filled so that he has no room for the same, and there be room in any other of the warehouses.

SEC. 10. *Be it enacted*, That it shall be the duty of each Tobacco Inspector to cause each hogshead of tobacco landed or delivered at the warehouse to which he is appointed to be numbered in succession as received, and to cause said number to be entered in a book kept for that purpose, together with the time said hogshead was received, the name of the vessel or other conveyance, if known to him, by which said hogshead was brought to the city of Baltimore, and of the owner or consignee of said tobacco, and the initials or other marks on said hogshead identifying the same; and when said hogshead shall be removed from said

warehouse, he shall cause an entry to be made in some book kept for that purpose, of the time when the same was so removed, the name of the person to whom the same was delivered, and of the vessel or other conveyance by which the same was taken away.

SEC. 11. *Be it enacted*, That all tobacco delivered at any warehouse in such condition as to require cooperage, shall be properly taken care of by the inspector, who shall cause it to be coopered, and the owner thereof, or his agent, charged for the same not less than twenty-five nor more than seventy-five cents for each hogshead so coopered.

SEC. 12. *Be it enacted*, That it shall be the duty of each Tobacco Inspector to cause all the tobacco in the warehouse to which he may have been appointed to be inspected as speedily as practicable, in regular order as numbered, without favor, affection or partiality to any one, and each violation of the provisions of this section shall subject the offender to a penalty of one hundred dollars, to be recovered in the Criminal Court of Baltimore city.

SEC. 13. *Be it enacted*, That it shall be the duty of each inspector to cause each hogshead of tobacco, before it is uncased, to be weighed, and the tobacco in each hogshead and the case itself to be separately weighed in his presence or that of his weighing clerk, in scales with weights of the proper standard; and the weight of each hogshead as first weighed, and the gross and net weight of the tobacco therein contained after inspection, to be entered in a proper book, with sufficient reference to its numbers and marks as previously recorded.

SEC. 14. *Be it enacted*, That it shall be the duty of each inspector to cause to be marked with a marking iron on the side of each hogshead of tobacco under his charge the warehouse number and weight of said hogshead, and the net weight of tobacco contained therein, and to cause the warehouse number of such hogshead to be marked with blacking on each head thereof.

SEC. 15. *Be it enacted*, That it shall be the duty of each inspector to cause all tobacco under his charge to be uncased

and broken, and himself or some competent person appointed by him, to draw samples thereof, and cause the same to be tied, fastened, labeled and marked as hereinafter provided.

SEC. 16. *Be it enacted*, That each hogshead of tobacco raised in Maryland or Ohio shall be broken in five different places, the first break to be not more than nine inches from the floor, and one bundle shall be taken from each break of the average quality thereof, and the five bundles so taken shall be so drawn as to constitute a fair and just sample of the quality and condition of the tobacco in said hogshead.

SEC. 17. *Be it enacted*, That each hogshead of tobacco that may have been raised in any other State than Maryland or Ohio, shall be broken in three different places, and five bundles shall be taken from each break of the average quality thereof, and the fifteen bundles so taken shall be so drawn as to constitute a fair and just sample of the quality and condition of the tobacco in such hogshead.

SEC. 18. *Be it enacted*, That one of the clerks of said inspector shall then tie together said five or fifteen sample bundles, as the case may be, by passing a strong tape through the head of each bundle, and confining thereon a strip of pasteboard on which shall be written the warehouse number of the hogshead represented by said sample, the number of the warehouse in which the same was inspected, the date of inspection, the name of the owner of said tobacco, if known to him, or if said name be not known to him the initials or other marks on said hogshead.

SEC. 19. *Be it enacted*, That if the Inspector be of opinion that said tobacco is sound, clean, in good order and merchantable, he shall then cause the pasteboard and tape on said sample to be sealed with sealing-wax and stamped with the seal of said warehouse, and shall deliver said sample to the owner or his agent, with a certificate stating the date of inspection, the warehouse mark and number of said hogshead, the weight thereof and net weight of tobacco contained therein.

SEC. 20. *Be it enacted*, That if more than ten pounds of tobacco shall have been cut from any one hogshead, inspected and passed as aforesaid, in consequence of said tobacco having been wet or otherwise injured, the inspector shall note on the label and the certificate the weight of the tobacco which may have been so cut off.

SEC. 21. *Be it enacted*, That if the certificate provided for in the last two sections shall be lost, the inspector shall on affidavit of the fact being given, made by the person to whom the same had been issued, cause a duplicate certificate, marked as such, to be issued to the party entitled thereto.

SEC. 22. *Be it enacted*, That if the owner or his agent shall return the samples and certificates hereinbefore provided for, and desire to have new ones, the inspector shall untie said original samples, detach therefrom and cancel the label affixed thereto, and draw new samples in the same way in which he is hereinbefore required to draw original ones; shall make record of such fact, and shall cause said new samples to be tied and marked, as the original samples are required to be tied and marked, and shall also cause the word "redrawn" to be written on the label affixed thereto; or if any person who had said original samples shall make affidavit that he has lost them, the inspector shall draw new samples and mark the same, and make record thereof, as herein provided, and shall charge for redrawing, as above, the sum of one dollar.

SEC. 23. *Be it enacted*, That if any inspector shall find any tobacco which may be opened unmerchantable or out of order, he shall cause the same to be carefully cased up and weighed, and cause to be entered in a proper book the reasons for which the same may have been stayed, together with any other appropriate remarks.

SEC. 24. *Be it enacted*, That all tobacco thus stayed, unless the owner or his agent chose to remove the same for the purpose of reconditioning it, shall, with all convenient dispatch, be shaken out, conditioned, packed, reweighed and reinspected as other tobacco, under the supervision of the

Inspector, but shall not be taken from the warehouse for any of said purposes, and shall then be entered upon the inspector's books, and samples and certificates thereof shall be furnished as are required in reference to other tobacco.

SEC. 25. *Be it enacted*, That the owner or agent of each hogshead of stayed tobacco, reconditioned and packed in any State Tobacco Warehouse, shall pay in proportion to the amount of tobacco in each hogshead requiring reconditioning, from one dollar to two dollars therefor in addition to other charges; *provided, however*, that he shall have the privilege of removing the same elsewhere than to another of said warehouses, for the purpose of having the same reconditioned and packed.

SEC. 26. *Be it enacted*, That every hogshead of tobacco which has been sold by the grower or his agent, and which shall remain in any warehouse, under the charge of an inspector, for a period of more than six months from the date of inspection, shall be liable to a charge of fifteen cents per month storage for every month after the expiration of the said six months, to be paid before said tobacco shall be removed.

SEC. 27. *Be it enacted*, That every hogshead of tobacco shall be liable to the charge of one dollar and fifty cents outage if weighing less than eleven hundred pounds, and to fifteen cents additional for every hundred pounds over that weight, which shall be paid by the purchaser thereof to the inspector having charge of the same before it is removed, and shall be liable to no other charge not hereinbefore expressly provided for

SEC. 28. *Be it enacted*, That all scrap-tobacco accruing at any of the warehouses shall be packed in hogsheads, a fair average sample of each hogshead taken, and the inspector having charge thereof shall sell the same by such samples at public auction after having advertised said sale for one week in the newspaper having the largest circulation in the city of Baltimore.

SEC. 29. *Be it enacted*, That all tobacco which shall have

remained in any warehouse four years after inspection, the owner of which shall not be known, or the charges on which shall not have been paid, shall, unless the same be called for and the charges thereon paid, be sold by sample at public auction, after advertisement of said sale once a week for three months in the newspaper having the largest circulation in the city of Baltimore; and said advertisement shall state the warehouse number of each hogshead to be sold, the net weight of tobacco contained therein, the date of inspection, the person in whose name the same was inspected, and the charges to which the same is liable.

SEC. 30. *Be it enacted*, That it shall be the duty of each tobacco inspector to report to the Comptroller every sale made under the last section, in connection with the next account to be rendered thereafter, to mention in said report every name, mark or initial which will facilitate the identification of each hogshead, together with the net amount for which the same was sold and the warehouse charges to which it was liable.

SEC. 31. *Be it enacted*, That if any person shall within one year from the date of any sale referred to in the last two preceding sections, satisfy the Comptroller that he is rightfully entitled to the proceeds of any such sale, the Comptroller shall draw his warrant on the Treasurer in favor of such person for the principal sum which shall have been received and paid into the Treasury therefor.

SEC. 32. *Be it enacted*, That when so large an amount of tobacco accumulates in any one warehouse as to delay or interfere with inspections, the inspector in charge of said warehouse shall remove to some other proper and safe place so much of said inspected tobacco as shall be necessary to give room for that which is uninspected, the necessary cost of such removals to be charged and accounted for as other expenses.

SEC. 33. *Be it enacted*, That no inspector or other person appointed or employed in either of the tobacco warehouses in the city of Baltimore shall allow any tobacco belonging to himself, or in which he is interested, to be taken for in-

spection to the warehouse in which he is appointed, or in which he is employed, under a penalty of twenty dollars for each offence; but tobacco raised by any one so appointed or employed may be inspected as other tobacco at any other warehouse.

SEC. 34. *Be it enacted*, That no Inspector, during his continuance in office, and no other person employed in either of the warehouses of the city of Baltimore, during the time of his employment, shall be engaged or interested, directly or indirectly, in the purchase or sale of any tobacco other than such as he may himself have raised, nor attempt to induce or influence the owner of any tobacco to consign the same to any particular agent or agents, or to send the same for inspection to one warehouse rather than another, under a penalty of dismissal from office or service and a fine of one hundred dollars for each offence.

SEC. 35. *Be it enacted*, That it shall be the duty of the several inspectors to prevent any owner or purchaser of tobacco, or the agent of either, and any other person whatsoever, except persons appointed for and employed in the particular warehouse in which the inspection may be made, from interfering with or assisting at the inspection, weighing or sampling of tobacco, or tying up or arranging, or sealing the bundles constituting the samples, and any inspector who shall violate any provision of this section, or knowingly permit it to be violated, shall be dismissed from office and fined one hundred dollars for each offence.

SEC. 36. *Be it enacted*, That it shall be the duty of the several inspectors to cause printed notices, containing the provisions of the last preceding section, to be posted in one or more conspicuous places in each tobacco warehouse in the city of Baltimore, and if any person shall attempt to violate any of said provisions the inspector shall direct the attention of such person to one of said notices; and if he shall thereafter violate said provisions, or either of them, the person so offending shall be liable to a fine of one hundred dollars for each offence.

SEC. 37. *Be it enacted*, That if any Inspector shall accept

or receive, directly or indirectly, any gratuity or reward other than his salary for anything done by him in pursuance of this Act, he shall be dismissed from office, and be forever thereafter disqualified from holding any office under this article, or any supplement to or amendment thereof, and shall, moreover, be liable to a fine of five hundred dollars for each offence.

SEC. 38. *Be it enacted*, That if any person other than an Inspector employed or engaged in any tobacco warehouse shall accept or receive, directly or indirectly, any gratuity or reward other than his regular pay or per diem for anything done in connection with his said employment, or the subject-matter thereof, he shall, on being thereof convicted, be liable to a fine of three hundred dollars, or to six months imprisonment, in the discretion of the court.

SEC. 39. *Be it enacted*, That if any person shall offer a bribe to any inspector, or any other person engaged or employed in any one of the said tobacco warehouses, as an inducement to show partiality or favoritism to such person, or otherwise to violate any provision of the Code in reference to the inspection of tobacco, he shall, on being thereof convicted, be sentenced to pay a fine of three hundred dollars, which shall go to the credit of the tobacco fund.

SEC. 40. *Be it enacted*, That if any person shall erase, alter or add to any word, letter, mark, number or figure placed in pursuance of this article, by any inspector, or any one in the employment of any inspector, on any hogshead, or written in pursuance of the article by any inspector, or any one in the employment of any inspector, on the label of any sample, or shall fraudulently take any tobacco from any sample or substitute other tobacco for any in such sample, or any part thereof, or shall counterfeit any inspector's certificate or seal, he shall, on conviction thereof, forfeit three hundred dollars, to go to the credit of the tobacco fund, and be otherwise punished according to law.

SEC. 41. After the passage of this Act it shall not be lawful to carry out of this State, in hogsheads, any tobacco raised in this State, except in hogsheads which shall have been inspected, passed and marked agreeably to the provisions of this Act, unless such tobacco shall have been inspected and passed before this Act goes into operation; and any person violating the provisions of this section shall forfeit and pay the sum of three hundred dollars, which may be recovered in any court of law of this State, and which shall go to the credit of the tobacco fund; *provided*, that nothing herein contained shall be construed to prohibit any grower of tobacco or any purchaser thereof, who may pack the same in the county or neighborhood where grown, from exporting or carrying out of this State any such tobacco without having the same opened for inspection; but such tobacco so exported or carried out of this State without inspection, shall in all cases be marked with the name in full of the owner thereof, and the place of residence of such owner, and shall be liable to the same charge of outrage and storage as in other cases, and any person who shall carry or send out of this State any such tobacco, without having it so marked, shall be subject to the penalty prescribed by this section. (Original Section 41, 1864, c. 346, was repealed and amended by 1870, c. 291, and is as above.)

SEC. 42. *Be it enacted*, That tobacco raised in Maryland shall not be packed in casks exceeding fifty-two inches in the length of the staves and eighty-four inches in the whole diameter within the staves, across the head and bulge, and if any such tobacco shall be packed in a larger hogshead the inspector having charge of the warehouse in which the same may be shall notify the owner or his agent thereof, and refuse to inspect and pass the same until packed in a hogshead of proper dimensions.

SEC. 43. *Be it enacted*, That each of said Inspectors shall every three months, counting from the date of his appointment, furnish to the Comptroller a faithful, accurate and detailed account of all the receipts and disbursements of

his office, which account shall be verified by the following affidavit to be made and subscribed by said Inspector and his chief clerk before some Justice of the Peace, of the city of Baltimore, viz: "State of Maryland, city of Baltimore, to wit: I, the subscriber, a Justice of the Peace of the State of Maryland, in and for the city of Baltimore, hereby certify that on this ——— day of ———, 18—, A. B., a Tobacco Inspector, personally appeared before me and made and subscribed the following oath or affirmation: I, A. B., Tobacco Inspector, do solemnly swear (or affirm) on the Holy Evangely of Almighty God, that the above account is just and true as stated, that I have charged myself therein with all the moneys I have received or which to my knowledge have been paid by any one other than myself, to any one employed or engaged in any warehouse of which I have had charge as Inspector, for any of the duties or emoluments thereof, or for anything done in connection therewith, for the period embraced in said account, that I have claimed credit therein for no moneys which I have not actually and in good faith paid, and that I have not received or agreed to receive, and do not expect, and will not accept any portion of or any commission on, or any gratuity for any moneys for which I have therein claimed credit, that I have without favor, affection or partiality to any one, performed the duties of said office as economically as was compatible with the efficient discharge thereof, and at the same time also appeared before me, C. D., chief clerk of the said A. B., and on the Holy Evangely of Almighty God, made oath as follows, viz: I, C. D., chief clerk of A. B., Tobacco Inspector, have carefully read the above oath made by him, and swear on the Holy Evangely of Almighty God that I believe the same to be true in letter and spirit."

Signed,—J. P.
A. B.
C. D.

SEC. 44. *Be it enacted*, That the said Inspector at the time of presenting the said account, shall pay to the Comptroller the excess of all the receipts of his office over the

disbursements thereof, and all payments so made shall immediately be by the Comptroller paid to the Treasurer, and by the latter credited to the tobacco fund.

SEC. 45. *Be it enacted*, That after the Comptroller shall have examined and approved said account the Treasurer shall, on the warrant of the Comptroller, pay to the said Inspector out of the tobacco fund his quarterly salary, at the rate of twenty-five hundred dollars per annum.

SEC. 46. *Be it enacted*, That the books of each warehouse shall be open to the inspection of any party who may have at the time, or shall have had previously, any tobacco in said warehouse, and extracts from said books, certified to by the chief clerk of any such warehouse, may be taken by said party if he so desire.

SEC. 47. *Be it enacted*, That any of the fines, penalties and forfeitures imposed upon Tobacco Inspectors or their employes, or upon any other person for violating the law for Inspection of Tobacco, may be recovered by action of debt, to be instituted within one year after the commission of the offence charged, in the name of the State, in any of the courts of the city of Baltimore having jurisdiction, of the amount without reference to the residence of the defendant, or at the option of the plaintiff, in any county where the defendant shall reside, and the clerk of any of the said courts shall direct such process to the sheriff of said city or county, and the return of said process by said sheriff shall avail for all purposes as if it were the return of the sheriff of the city or county in which suit may have been instituted; nothing, however, in this section is to be construed as ousting the criminal jurisdiction of the proper courts in the premises.

SEC. 48. *Be it enacted*, That all moneys now in the hands of the Treasurer heretobefore received from any one acting as Tobacco Inspector, and all received by him in pursuance of this article, and all fines, penalties and forfeitures under this article not otherwise provided for, shall constitute a fund to be called the tobacco fund.

SEC. 49. *Be it enacted*, That where no other appropriation

is made of any fine, penalty, or forfeiture referred to in the last preceding section, one-half thereof shall go to the informer and the other half to the tobacco fund, and the interest of the informer therein shall not disqualify him as a witness in any action, civil or criminal.

SEC. 50. *Be it enacted*, That the Comptroller shall furnish a bound copy of this Act to each inspector appointed in pursuance thereof.

SEC. 51. *Be it enacted*, That this act shall go into operation immediately from and after its passage.

1872—CHAPTER 36.

AN ACT to add a new article to the Code of Public General Laws Regulating the Inspection of Tobacco.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That the following article regulating the Inspection of Tobacco be added to the Code of Public General Laws:

SECTION 1. That the Governor, by and with the advice and consent of the Senate, shall biennially appoint five inspectors of tobacco, one for each tobacco warehouse in the City of Baltimore, and also one Supervisor of said warehouses.

SEC. 2. That the said inspectors so appointed shall, before entering upon the discharge of their duties as inspectors of tobacco, be required to give bond in the sum of thirty thousand dollars each, satisfactory to the Treasurer of the State, for punctual and full returns at the end of each quarter, and for the faithful performance of all the duties imposed upon them by law, and the said bonds shall be recorded in the office of the Clerk of the Superior Court of Baltimore city.

SEC. 3. That any inspector of tobacco who is now, or may

hereafter be appointed by the Governor, to any of the warehouses of the city of Baltimore, who shall have properly bonded and duly qualified according to law, shall take charge of all the tobacco, books, furniture, appurtenances and effects found in the warehouse to which he may be appointed, and shall receipt to his predecessor for the same.

SEC. 4. That no inspector or other person appointed or employed in any of the tobacco warehouses of the city of Baltimore shall be engaged in the purchase or sale of tobacco, (except of their own growth), nor shall it be lawful for any person thus appointed or employed in the warehouses to receive any gift or emolument whatever, either directly or indirectly, for any favor or service rendered, other than his regular salary or wages. Any person thus convicted shall be at once dismissed from office or service.

SEC. 5. That each inspector shall be entitled to appoint a chief clerk, a shipping clerk, a receiving clerk and a weighing clerk, and such number of screwmen and laborers as shall be necessary for the economical management of his warehouse; the salary of the inspector to be twenty-five hundred dollars per annum, of the chief clerk twelve hundred dollars per annum, and of the shipping clerk, receiving clerk and weighing clerk each nine hundred dollars per annum; the wages of the screwmen to be two dollars and fifty cents per day, and of the laborers to be two dollars per day.

SEC. 6. That each inspector shall have full charge of all the receipts and disbursements of the warehouse to which he may be appointed, and shall make all contracts for nails or any other articles that may be required for the use of his warehouse, except for repairs, and shall make a regular return to the Comptroller of the Treasurer four times in each year, viz: January, April, July and October, showing the receipts and disbursements of his warehouse, with the vouchers therefor, setting forth in his report of receipts the amount received from outage, storage, cooperage, reconditioning, stays, sale of scraps, and so forth; and in his disbursements the amounts paid for labor, nails, lumber,

hoops and ordinary incidental expenses, which return shall have been first examined and approved by the Supervisor of Warehouses.

SEC. 7. That it shall be the duty of the Supervisor of Warehouses to see that no inspectors employ more hands than are necessarily required for the proper working of his house, and that scraps are not made unnecessarily; also, that the houses be kept in repair, and that they are taken care of, also to audit all quarterly returns of the inspectors before the same shall be forwarded to the Comptroller of the Treasury, and enclose the same if correct; it shall also be he his duty to decide whatever complaints may originate between either buyer or seller, and inspector of any warehouse, and to exercise a general supervision over all the warehouses, in regard to expenses and so forth, for the benefit of all parties interested in the same; his salary to be twenty-five hundred dollars per annum; the said Supervisor shall give the same bond that is now required of the other Tobacco Inspectors by the laws of this State.

SEC. 8. That in case of the absence of any inspector from his warehouse, by reason of sickness or other uanavoidable causes, then during his absence his duties shall devolve upon the chief clerk, or such other clerk or employe as he may select or designate, who shall qualify under oath for the faithful discharge of the same.

SEC. 9. That the hours of labor in the several tobacco warehouses in the city of Baltimore shall be from seven o'clock A. M. until twelve o'clock M., and from one o'clock P. M. until six o'clock P. M.

SEC. 10. That all tobacco landed or delivered at any of the warehouses in the city of Baltimore for inspection, shall be taken charge of by the inspector, through his receiving clerk, and the parties delivering the same shall be entitled to receive, upon demand, the inspector's receipt therefor.

SEC. 11. That every inspector shall have uncased and break every hogshead of tobacco that may be delivered for inspection, in not less than five different places for Mary-

land and Ohio, and not less than three different places for Kentucky and Virginia, and if the inspector shall be of opinion that such tobaco is sound, clean and in good order, then he shall select from each break one bundle of the average quality of the break, and the bundle so selected shall be considered the sample of the hogshead; he shall also have the hogshead properly marked with its number, the year of inspection, and the initials of the owner on each head and on the bilge, and shall have the tare and net weight marked with iron on the bilge.

SEC. 12. That if any inspector shall, upon examination of any hogshead of tobacco, have reason to suspect that the same is trash, or false packed, he shall cause the same to be shaken out and repacked, and shall charge for doing so the sum of two dollars per hogshead, the same to be paid by the owner or his agent.

SEC. 13. That it shall be the duty of the inspector to confine the sample of each hogshead of tobacco inspected by tying them together with a strong tape run through the head of said sample, in such manner as shall be most likely to prevent the bundles from separating or being pulled out, and shall confine on said sample a pasteboard label, on which shall be written the marks and number of the hogshead, the date of inspection, and the name or number of the warehouse, and shall seal said tape and label with sealing-wax, and shall stamp it with the seal of the warehouse. Whenever a hogshead of tobacco is redrawn or reviewed the sample and label thereon of the original inspection shall be returned to the inspector, to be by him destroyed, and the label on the sample given at the redrawing or reopening of the tobacco shall show that the hogshead has been reinspected or reviewed.

SEC. 14. That any person or persons being proved guilty of tampering with any sample of tobacco after it shall have passed from the custody or control of the inspector, shall be liable to a fine of not less than one hundred dollars, by prosecution in the Criminal Court of Baltimore City.

SEC. 15. That each inspector shall cause to be kept in

proper books the name of the owner, the number, gross, tare and net weight of every hogshead of tobacco inspected by him, the State where grown, the consignee of the same, the name of the vessel by which shipped out, and the name of the party shipping the same, and for every hogshead so inspected by him he shall issue his certificate or note, stating in such certificate or note the name or initials of the owner, the number of the hogshead, the State where grown, the date of inspection, and the gross, tare and net weight of the hogshead, and he shall make no delivery of any hogshead of inspected tobacco from his warehouse except upon surrender of certificate or note corresponding with the number of the hogshead.

SEC. 16. That if any certificate or note be lost or mislaid or destroyed, the person entitled to receive the tobacco, by virtue of such note or certificate, may make oath before a justice of the peace to the effect of said note being lost, and shall take a certificate to that effect from such justice of the peace to the inspector, and deposit the same with him; then the inspector may deliver to such person a new note or certificate with marks, numbers, weights and date corresponding with the former note, and shall thereby be discharged from all actions and demands on account of such former note or certificate.

SEC. 17. That no person shall be entitled to receive a new note or certificate in lieu of any note or certificate lost or mislaid unless he shall notify the inspector at whose house it was issued within twenty days after such note or certificate is first discovered to be lost or mislaid.

SEC. 18. That all tobacco inspected in any of the warehouses which may be condemned or stayed shall be carefully cased up and weighed, and the gross weight and tare be entered upon a book kept for that purpose, together with the number of breaks in such hogshead as may be stayed, also the cause, whether for false packing, trash, order or wet.

SEC. 19. That all tobacco thus stayed shall, with all convenient despatch, be shaken out, reconditioned and

packed under the supervision of the inspector, and reweighed and entered upon the inspection books as all other tobacco.

SEC. 20. That the several inspectors having charge of the tobacco warehouses in the city of Baltimore shall charge for reconditioning and repacking all stayed tobacco the following prices: For one or two breaks, one dollar; for full stay, two dollars, to be paid by the owner or his agent; and for redrawing hogsheads of Maryland and Ohio tobacco, fifty cents; and for redrawing all other kinds, one dollar for each hogshead redrawn, to be paid by the owner or his agent; the charge of outage shall be one dollar and fifty cents for every hogshead not exceeding eleven hundred pounds, and twelve and a half cents additional on every hundred pounds over eleven hundred, in all cases to be paid by the shipper of the tobacco or his agent.

SEC. 21. That the owner of any tobacco that may be stayed or condemned shall have the privilege of removing the same from the warehouse free of all costs or charges whatever, either for outage, cooperage or storage; *provided,* also, that it shall not be lawful to remove any stayed tobacco from one warehouse to another, except as all other tobacco is removed.

SEC. 22. That all tobacco delivered at any of the warehouses in the city of Baltimore for inspection in such condition as to require cooperage shall be properly coopered and taken care of, and the owner or his agent charged for the same not less than twenty-five cents or more than fifty cents for each hogshead thus coopered.

SEC. 23. That all scrap-tobacco accruing in any of the warehouses in the city of Baltimore shall be sold by the inspector to the best advantage, for the benefit of the tobacco fund, and the proceeds accounted for with all other receipts in returns to the Comptroller.

SEC. 24. That each inspector shall in the month of April annually cause to be inserted in some one of the Baltimore newspapers, once each week for four successive weeks, an advertisement stating the name of the warehouse, the

weight, gross tare and net, the number and the name or initials of any hogshead of tobacco that may have been inspected which has remained in the warehouse for the space of four years, and the owners thereof being unknown to the inspector, and if such tobacco shall not be claimed within thirty days after the termination of the advertisement, the same shall be sold by the inspector in such manner as he shall deem best, and the same be accounted for in the first quarterly return thereafter.

SEC. 25. That if the owner of any tobacco, sold under the preceding section, shall within one year from the date thereof, satisfy the Comptroller that the tobacco so sold was his right and property, the Comptroller shall draw his warrant on the Treasurer for the amount of such sale after deducting warehouse cost and charges.

SEC. 26. That no tobacco of the growth of this State shall be passed or accounted lawful tobacco unless the same be packed in hogsheads not exceeding fifty-four inches in length of the staves, nor exceeding forty-six inches across the head, and the owner, or his agent, of tobacco packed in any hogshead of greater dimensions shall repack the same in hogsheads of the size herein prescribed at his own expense before the same shall be passed.

SEC. 27. That whenever so large an amount of inspected tobacco shall have accumulated in any one warehouse as to delay the inspections, and all other warehouses are equally full, the inspector of such warehouse shall have the right to rent storage for as much as may be necessary to remove in order to make room for the inspected tobacco.

SEC. 28. That no tobacco of the growth of this State, and in the hands of the planters or their agents, shall be subject to any costs or charges for storage or warehouse rent; this not to apply to tobacco the growth of any other State, or the growth of this State, which may have been sold to any purchaser or shipper.

SEC. 29. That every hogshead of tobacco of the growth of this State that shall remain in any warehouse after being sold by the grower or his agent, for a longer period than

twelve months, and every hogshead of tobacco of the growth of any other State, whether sold or unsold, that shall remain in any warehouse for a longer period than twelve months, the inspector of such warehouse shall charge the owner thereof the sum of fifteen cents per hogshead storage, for each month after the said twelve months.

SEC. 30. That in the absence of the State Wharfinger the inspector of each warehouse shall have charge and control of the wharf in front of his warehouse so far as relates to the landing or cording of wood or other material, to the exclusion of tobacco, and all vessels or other conveyance having tobacco to deliver to such warehouse shall have preference over all others in the use of such wharves; that no charge of wharfage shall be laid on any tobacco received at or delivered froin any of the State warehouse wharves.

Sec. 31. That when any Inspector shall bring his own tobacco to the warehouse whereof he is Inspector, the same shall not be inspected unless done by the Inspector of some other warehouse.

Sec. 32. That the Comptroller, Librarian, or other proper officer, shall furnish each Tobacco Inspector with a bound copy of this Act, for his office use, the cost of the same to be paid out of the tobacco fund.

Sec. 33. That all laws or parts of laws, inconsistent with this Act, and the provisions therein, shall be and the same are hereby repealed.

Sec. 34. *And be it enacted*, That this Act shall take effect from the date of its passage.

1872—CHAPTER 228.

AN ACT to repeal and re-enact section twenty of an Act passed at the present session of the General Assembly of Maryland, entitled "an Act to regulate the Inspection of Tobacco."

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That section twenty of the Act passed at the present session, entitled "an Act to regulate the Inspection of Tobacco," be and the same is hereby repealed and re-enacted, to read as follows:

SEC. 20. The several inspectors having charge of the tobacco warehouses in the City of Baltimore, shall charge for re-conditioning and re-packing all stayed tobacco the following prices: For one or two breaks, one dollar; for full stay, two dollars; to be paid by the owner or his agents, and for re-drawing hogsheads of Maryland and Ohio tobacco, fifty cents, and for re-drawing all other kinds, one dollar for each hogshead re-drawn, to be paid by the owner or his agent; the charge of outage shall be two dollars for every hogshead not exceeding eleven hundred pounds, and twelve and a-half cents additional on every hundred pounds over eleven hundred pounds; to be paid by the shipper of the tobacco or his agent.

SEC. 2. *And be it enacted*, That this Act shall take effect from the date of its passage.

1874—CHAPTER 394.

AN ACT to repeal and re-enact with amendments section twenty-nine, of chapter thirty-six, of the acts of eighteen hundred and seventy-two, entitled "An Act to add a new article to the Code of Public General Laws, regulating the inspection of tobacco."

WHEREAS, By section twenty-nine, chapter thirty-six, of the acts of eighteen hundred and seventy-two, entitled "An

Act to add a new article to the Code of Public General Laws, regulating the inspection of tobacco," it was enacted that every hogshead of tobacco of this State that shall remain in any warehouse after being sold by the grower for a longer period than twelve months, and any hogshead of tobacco of the growth of any other State, whether sold or unsold, remaining in the warehouse a longer period than twelve months, the inspector of such warehouse shall charge the owner thereof the sum of fifteen cents per hogshead storage for each month after the said twelve months; and

WHEREAS, Said enactment being detrimental to the interest of the tobacco growers of this State by not furnishing sufficient protection, especially to the tobacco of Maryland growth, therefore—

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That said section twenty-nine, of chapter thirty-six, of the acts of eighteen hundred and seventy-two, entitled "An Act to add a new section to the Code of Public General Laws, regulating the inspection of tobacco," be and the same is hereby repealed and re-enacted as follows:

29. Every hogshead of tobacco of the growth of this State that shall remain in any warehouse after being sold by the grower, or his agent, for a longer period than six months, and every hogshead of tobacco of the growth of any other State, whether sold or unsold, that shall remain in any warehouse for a longer period than four months, the inspector of such warehouse shall charge the owner thereof the sum of fifteen cents for each month after the said six months.

SEC. 2. *And be it enacted*, That this act shall take effect from the date of its passage.

1878—CHAPTER 386.

AN ACT to repeal sections one, five and thirteen of chapter thirty-six of the acts of eighteen hundred and seventy-two, entitled "An act to add a new article to the Code of Public General Laws, regulating the inspections of tobacco," and to re-enact the same with amendments.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That sections one, five and thirteen of chapter thirty-six of the acts of eighteen hundred and seventy-two, be and the same are hereby repealed, amended and re-enacted so as to read as follows:

1. That the Governor, by and with the advice and consent of the Senate, shall biennially appoint five Inspectors of Tobacco, one for each Tobacco Warehouse in the city of Baltimore.

5. That each inspector shall be entitled to appoint a chief clerk, a shipping clerk, a receiving clerk, and a weighing clerk, and such number of screwmen and laborers as shall be necessary for the economical management of his warehouse; the salary of the inspectors to be eighteen hundred dollars per annum, and of the chief clerk one thousand dollars per annum, and of the shipping, receiving and weighing clerks each eight hundred dollars per annum; the screwmen shall be paid two dollars a day, and laborers employed under this section shall receive one dollar and fifty cents a day.

13. That it shall be the duty of the inspector to confine the sample of each hogshead of tobacco inspected by tying them together with a strong tape, run through the head of said sample in such manner as shall be most likely to prevent the bundles from separating or being pulled out, and shall confine on said sample a pasteboard label, on which shall be written the marks and number of the hogshead, the date of inspection, the name or number of the warehouse, and such other remarks by the inspector about the quality and condition of the tobacco as cannot be clearly

shown by the sample, and seal such tape and label with sealing-wax, and shall stamp it with the seal of the warehouse. Whenever a hogshead of tobacco is redrawn or reviewed the sample and label thereon of the original inspection shall be returned to the inspector, to be by him destroyed; and the label on the sample given at the redrawing or reopening of the tobacco shall show that the hogshead has been reinspected or reviewed.

SEC. 2. *Be it enacted*, That sections one and five of this act shall take effect on the first Monday of March, eighteen hundred and eighty, and not before.

17-39

OFFICE SUPREME COURT U. S.
FILED
DEC 27 1882
JAMES H. McKENNEY, Clerk.

IN THE

Supreme Court of the U. S.

October Term, 1882.

No. 490.

HENRY A. TURNER, PLAINTIFF IN ERROR,

vs.

STATE OF MARYLAND, DEFENDANT IN ERROR.

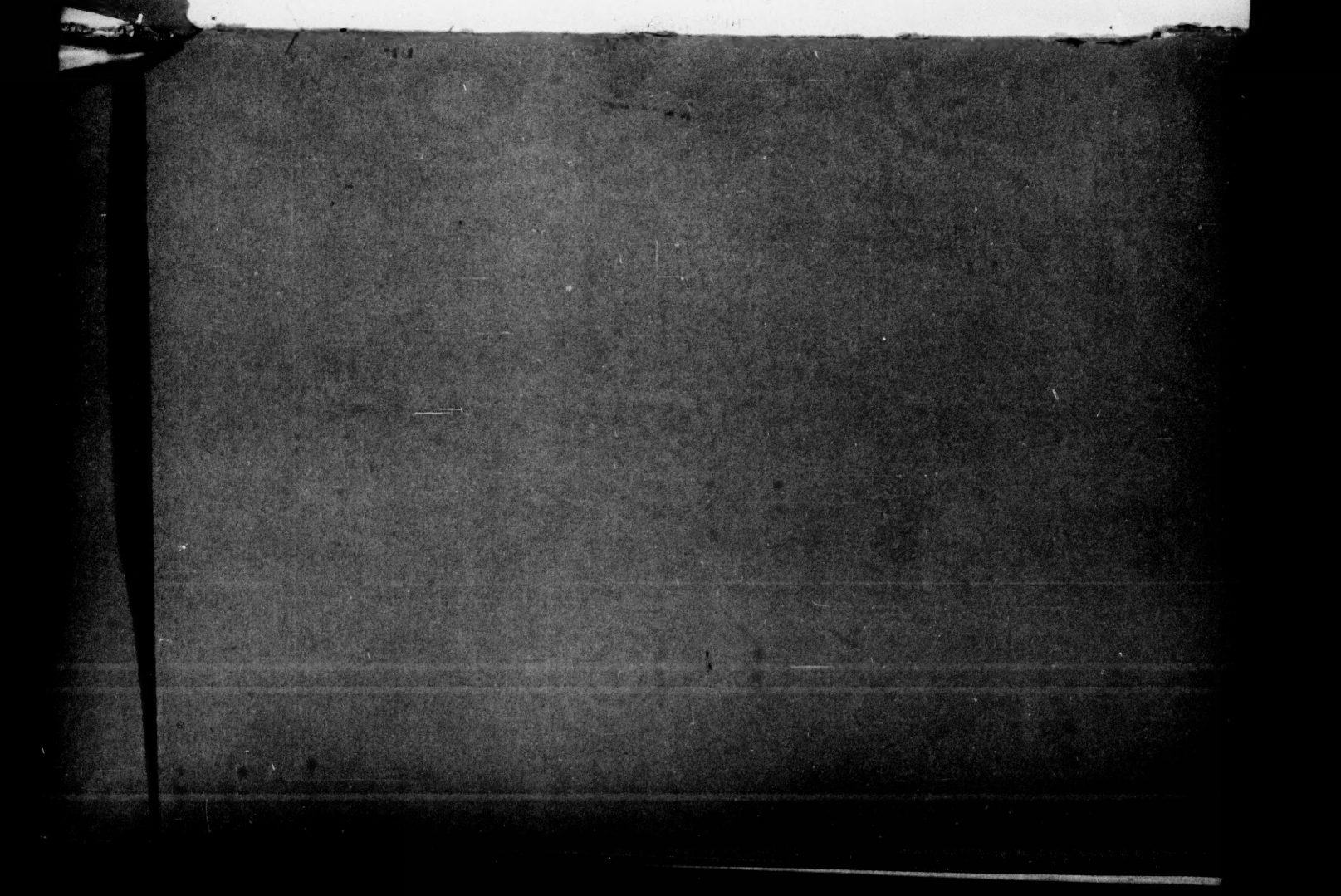
BRIEF

OF

CHARLES J. M. GWINN,

Attorney General of Maryland,
for the Defendant in Error.

J. MURPHY & CO., PRINTERS AND STATIONERS, BALT.



IN THE

Supreme Court of the United States,

OCTOBER TERM, 1882.

No. 490.

HENRY A. TURNER, PLAINTIFF IN ERROR,

vs.

STATE OF MARYLAND, DEFENDANT IN ERROR.

BRIEF ON THE PART OF THE DEFENDANT IN ERROR.

Tobacco was largely cultivated by the first settlers of the Province of Maryland, and at once became the most important article of their trade and export. Its inspection was provided for by a law passed within eight years after the foundation of the colony; 1640, chap. 10, Bacon's Laws of Md., and by the Provincial Acts of 1658, chap. 2, 1676, chap. 9, 1694, chap. 5, 1699, chap. 4, 1704, chap. 53, 1711, chap. 5, 1713, chap. 3, 1715, chap. 10, 1715, chap. 38, 1716, chap. 8, 1717, chap. 7, 1723, chap. 25, 1747, chap. 26, 1753, chap. 22, 1763, chap. 18, and by subsequent Acts to which I will hereafter refer.

This inspection was necessary for many reasons. Tobacco was, as I have said, the chief export of the Colony. Taxes were paid in that product. 1641, chap. 5—1763, chap. 18, secs. 5, 21. The rents to the Lord Proprietor were paid in merchantable tobacco, estimated at two pence per pound. 1671, chap. 11. The penalties of many bonds given for the security of the Province were payable in tobacco. 1661, chap. 7. The fees of public officers were always paid, apparently, in tobacco. 1642, chap. 30, 1686, chap. 4, 1763, chap. 18. The taxes laid in support of the established Religion of the Church of England were paid in tobacco. 1692, chap. 2. Fines and penalties were, in general, imposed in tobacco. 1641, chap. 6—1763, chap. 18. It was a legal tender in payment of debts. 1713, chap. 3, 1724, chap. 6—1763, chap. 18, secs. 14, 21, 23, 24, 25, 28, 30, 71. The fees of all Officers from the Chancellor, or Keeper of the Great Seal, to the "Cryers" in the County Courts, were payable in tobacco. 1763, chap. 18, secs. 37, 88–105. Bacon's Laws of Maryland.

The system of inspection, in force between 1641 and 1763, was revised and continued by the State Acts of 1789, chap. 26, 1801, chap. 63, 1827, chap. 91, 1828, chap. 164, 1829, chap. 233, 2 Md. Code, Art. 4, secs. 495–551, of 1860, and by many other Acts; and was again revised by the Acts of 1864, chap. 346, 1870, chap. 291, and 1872, chaps. 36 and 228; which last four Acts are all applicable to this case, and must be construed together as parts of one system.

Turner vs. State, 55 Md., 261. *Record*, pp. 8–10.

I will sum up briefly such particulars of the Acts last referred to as are necessary for the proper argument of this case.

There are five Tobacco Warehouses in the City of Baltimore, which are the property of the State, and which have been built for

the receiving and inspection of tobacco at different periods, beginning, I think, with 1804.

The Governor of Maryland is required to appoint, biennially, five inspectors of tobacco; one for each Tobacco Warehouse in the City of Baltimore. Md. Act of 1872, chap. 36, sec. 1.

It is provided by the same Act "that no tobacco of the growth of this State shall be passed or accounted lawful tobacco, unless the same be packed in hogsheads not exceeding fifty-four inches in the length of the staves, nor exceeding forty-six inches across the head, and the owner, or his agent, of tobacco packed in any hogshead of greater dimensions shall repack the same in hogsheads of the size herein prescribed at his own expense before the same shall be passed." 1872, chap. 36, sec. 26.

The Court of Appeals of Maryland decided in this case that, under the laws of Maryland, tobacco, grown in Maryland, and intended for exportation, must be brought to one of the State Tobacco Warehouses for inspection.

Turner vs. State, 35 Md., 261. *Record*, pp. 9, 10, 11.

Each hogshead of tobacco received at a State Tobacco Warehouse, was required to be numbered in succession as received, and the number and time of receipt and the initials, or marks, on the hogshead identifying it, to be entered in a proper record. 1864, chap. 346, sec. 10; 1872, chap. 36, sec. 11.

It was the duty of the inspector to cause each hogshead of tobacco to be weighed *before it was uncased*, and to cause the tobacco, in each hogshead, and the cask itself, to be afterwards separately weighed, and to enter in a proper book in connection with the proper warehouse number of the hogshead, (sec. 10,) the

weight of each hogshead as first weighed, and the gross and net weight of the tobacco contained therein. 1864, chap. 346, sec. 13; 1872, chap. 36, sec. 11.

It was the duty of each inspector to cause each hogshead of tobacco, thus weighed, to be marked, with a marking iron, on its side, with the warehouse number and weight of such hogshead, and with the net weight of tobacco contained therein. 1864, chap. 346, sec. 14; 1872, chap. 36, sec. 11.

Complete provision was made for the inspection of each hogshead of tobacco, by *sampling, after it was opened for inspection,* and for staying and re-conditioning unmerchantable tobacco. 1864, chap. 346, secs. 15–25; 1872, chap. 36, sec. 11.

It was provided that every hogshead of tobacco should be liable to a prescribed charge for outage in proportion to its *weight.* 1864, chap. 346, sec. 27; 1872, chap. 36, sec. 20; 1872, chap. 228, sec. 20.

Under all the sections cited the charge for outage could be ascertained only by the weight of the particular hogshead.

The 41st section of the Act of 1864, chap. 346, as amended by the Act of 1870, chap. 291, provided that,—"After the passage of this Act it shall not be lawful to carry out of this State in hogsheads any tobacco raised in this State, *except in hogsheads which shall have been inspected, passed and marked agreeably to the provisions of this Act,* unless such tobacco shall have been inspected and passed before this Act goes into operation; and any person violating the provisions of this section shall forfeit and pay the sum of three hundred dollars, which may be recovered in any Court of law of this State, and which shall go to the credit of the tobacco

fund; *provided*, that nothing herein contained shall be construed *to prohibit any grower of tobacco, or any purchaser thereof, who may pack the same in the county or neighborhood where grown, from exporting or carrying out of this State any such tobacco without having the same opened for inspection;* but such tobacco, so exported or carried out of this State without inspection, *shall, in all cases, be marked with the name in full of the owner thereof, and the place of residence of such owner, and shall be liable to the same charge of outage and storage as in other cases;* and any person who shall carry or send out of this State any such tobacco, without having it so marked, shall be subject to the penalty prescribed by this section."

The indictment found against the Plaintiff in Error in the Criminal Court of Baltimore contained two counts.

The first count charged in substance, that the Plaintiff in Error, being a grower of tobacco in Charles County, in the State of Maryland, packed a quantity of such tobacco, of unknown weight, in a hogshead of unknown dimensions; and, after marking such hogshead with his full name and residence, shipped it to the City of Baltimore; but did not deliver it at any of the State Tobacco Warehouses in that city, nor to any State Inspector of Tobacco, to be weighed, passed and marked, but on the contrary, exported such hogshead from Baltimore to Bremen, in Germany, without having had it so weighed, passed and marked.

The second count also charged in substance the foregoing facts, adding thereto the additional allegation that the Plaintiff in Error did not pay the outage due to the State of Maryland on said tobacco, thus exported.

The Plaintiff in Error demurred to each count of the indictment, and, his demurrers being overruled, *pro forma*, and judgment

having been entered against him, he removed the record into the Court of Appeals of Maryland, as upon writ of error, by a petition in which he designated the questions of law by the decision of which he considered himself to be aggrieved.

These were, in substance:

1. That his demurrer to the first count ought to have been sustained, because he was not required by any existing Act of Assembly to deliver the hogshead of tobacco referred to in said count at any State Tobacco Warehouse for any purpose whatever.

2. That his demurrer to the second count ought to have been sustained because there was no existing Act of Assembly which required the payment of charges for outage and storage to any officer of the State on such tobacco as was referred to in the second count of the indictment.

3. That no law of the State of Maryland prescribed the penalty imposed by the judgment in this case for the non-delivery of a hogshead of tobacco at a State Tobacco Warehouse, or for the non-payment of charges of outage and storage upon tobacco grown, packed, marked and exported in the manner described in the indictment.

4. That the Act of 1870, chapter 291, if the same remained in force, was in contravention of the Constitution of the United States in so far as said Act required the payment of outage and storage charges upon tobacco grown, packed, marked and exported in the manner designated in the proviso of that Act.

The Court of Appeals of Maryland decided, *Turner vs. State*, 55 Md., 240. Record, pp. 7–12,—

First. That the Plaintiff in Error was bound to deliver the particular hogshead of tobacco at a State Tobacco Warehouse in order that it might be examined, and that it might be ascertained whether it was, or was not, of proper dimensions, and that its gross weight might be ascertained.

Second. That there was an existing obligation under the laws of the State to pay the charges of outage on said hogshead of tobacco.

Third. That there was an existing law of the State prescribing the penalty sought to be enforced by the indictment.

Fourth. That the Act of 1870, chap. 291, requiring the payment of outage charges upon tobacco grown, packed, marked and exported, in the manner designated in the proviso to that Act, was not in contravention of the Constitution of the United States.

The rulings of the Court of Appeals of Maryland upon the first three questions, affirming the existence of statutory obligations denied by the Defendant in Error, and construing those obligations, was final, if the Maryland Act of 1870, chap. 291, in so far as it required the payment of "outage" charges upon tobacco grown, packed, marked and exported, in the manner designated in the proviso of that Act, was not in contravention of the Constitution of the United States.

Michigan Central Railroad Co. vs. Michigan Southern Railroad Co., 19 Howard, 381.
Railroad Co. vs. Jackson, 7 Wallace, 266, 267.
Penn'a College Cases, 13 Wallace, 212.
Supervisors vs. United States, 18 Wallace, 81, 82.
Murray vs. Charleston, 96 U. S., 440.
Railroad Co. vs. Georgia, 98 U. S., 365, 366.

The Plaintiff in Error insists that the Maryland Act of 1870, chap. 291, is in contravention of the Constitution of the United States, because it is an attempt by the State of Maryland to regulate commerce with foreign nations, and among the several States; Const. U. S., Art. 1, sec. 8, sub-clause 3; and because its effect is to lay a duty on exports not absolutely necessary for executing the inspection laws of the State. Const. U. S., Art. 1, sec. 10, sub-clause 2.

The Defendant in Error, on the contrary, insists:

First. That the State of Maryland had the right, under the power reserved to or conferred upon it by Art. 1, sec. 10, sub-clause 2, of the Const. of the United States, to make the capacity, form, dimensions, or gross weight, of each package of tobacco the subject of inspection, and also to make the quality and net weight of each of such packages the subject of such inspection.

Second. That the State had the power, under the same sub-clause of the Federal Constitution, to designate the places at which, and the officers by whom, the examination of the capacity and gross weight of each of such packages might be made, in order that it might be seen whether the said dimensions and weight were those prescribed by law; and at which the quality and net weight of the contents of each of such packages might be ascertained, if examination of these particulars was necessary.

Third. That, under the pleadings in this case, the question whether the aggregate charge, imposed by the laws of Maryland, upon each hogshead of tobacco brought to a State Tobacco Warehouse under the requirement of the laws of that State, and taken from such warehouse for exportation, was a charge *absolutely necessary* for the execution of its inspection laws, does not properly arise.

Fourth. That, if such question were in the case, the State had a right to impose upon hogsheads of tobacco, subjected, under its laws, to this particular inspection, such charges as were absolutely necessary for executing the inspection laws of the State; and that the charges for *outage*, imposed by the Act of 1870, chap. 291, whether they constituted an impost, or duty, upon the particular product intended for exportation, or were only a compensation prescribed for services to be properly rendered, were constitutional.

I.

The second sub-clause of sec. 10, of Art. 1, of the Constitution of the United States, reserves, by implication, to each State, the power to pass inspection laws; and reserves, in express terms, to each State, the power to impose such imposts, or duties, on imports or exports, as may be absolutely necessary for executing its inspection laws.

The Constitution of the United States is to be construed by the rules which are applicable to the construction of a statute.

Webster vs. Cooper, 14 Howard, 504.

Words, therefore, which are used in that instrument, must be interpreted in the sense in which such words were understood, when the Federal Constitution was framed.

Preston vs. Browder, 1 Wheat., 120.
Woodruff vs. Parham, 8 Wall., 131, 132.
U. S. vs. Union Pacific R. R. Co., 91 U. S., 79.
Hardcastle on Const. of Stat. Law, 26.

The primary question in this case, therefore, is to ascertain whether, when the Constitution of the United States was adopted in 1787, the form, capacity, or weight of a package, was the sub-

ject of inspection under those English laws, from which the laws of the American colonies were largely drawn, and under the laws in force in the several political communities, which united in forming the Constitution of the United States.

In 1824, an Act was passed by Parliament for ascertaining and establishing uniformity of Weights and Measures. 9 Geo. 4, chap. 74. By the 23rd section of that Act, a great number of Statutes, Ordinances and Acts were repealed, so far as the same related to the ascertaining, or establishing, any standards of Weights and Measures. The repeal took effect from and after May 1st, 1825.

It may be assumed, therefore, that the statutes to which a reference was made, were in force in whole, or in part, when the Act of 5 Geo. 4, chap. 74, was passed.

The statutes thus in whole, or part, repealed by 5 Geo. 4, chap. 74, which are set forth in the 23rd section of that statute, beginning with "The Assize of Bread and Ale," regulated by the statutes of 51 Hen. 3, statute 1, and 51 Hen. 3, statute 6, and ending with the statute of 16 Chas. 1, chap. 19, for the reformation of Weights and Measures, relate, *primarily* to the *weight* of packages,—their *dimensions*,—and their *capacity*, irrespective of the *quality* of the articles contained in such packages.

They were statutes, which were enforced in the cities of England by the Mayors of such cities, or by their deputies, or by gaugers appointed by such Mayors. 22 Ed. 4, chap. 2; 11 Hen. 7, chap. 4; Customs of London, 3rd Ed. 19; 5 Geo. 4, chap. 74, sec. 25.

These statutes, *thus enforced*, were for the most part inspection laws, in the strictest sense.

Among the statutes, named in the 23rd section of the Stat. 5, Geo. 4, chap. 74, the following were in force in the Province of

Maryland: Stat. 9, Hen. 3, chap. 25; 25 Ed. 3, Stat. 5, chap. 10; 13 Rich., 2, Stat. 1, chap. 9; 11 Hen. 6, chap. 8; 12 Hen. 7, chap. 5. Chancellor Kilty's Report, pages 207, 220, 223, 227, 229; Alexander's British Statutes, pages 17, 172, 195, 246. The Act of 12 Hen. 7, chap. 5, indeed, was, in effect, formally adopted by the Maryland Act of 1671, chap. 8. J. H. Alexander's Report on Standards of Weight and Measurement in Maryland, page 9.

The statutes, named in the 23rd section of 5 Geo. 4, chap. 74, subsequent to the Stat. of 16 Chas. 1, chap. 19, were mainly *excise laws*, which did not extend to the colonies.

Excise laws combine the attributes of inspection and revenue laws. They ascertain the kind, quantity, or weight of the article by inspection, and impose a tax upon the kind, or quantity thus ascertained.

All measures of quantities and capacities, existing under English customs, or laws, or under laws having their origin in English customs, or laws, were measures of *weight*, as sufficiently appears from the statute 12 Hen. 7, chap. 5, regulating Weights and Measures, and the subsequent statutes upon the same subject. The *gallon* under the statute 12 Hen. 7, chap. 5, contained the eighth part, by *weight*, of a bushel of wheat.

The statutes referred to in the 23rd section of 5 Geo. 4, chap. 74, as in force in whole, or in part, until repealed in 1824, prove that, in 1787, when the Constitution of the United States was framed, inspection laws, in the sense in which they were known to English law, included laws prescribing the capacity, form, dimensions, or weight of a package; *and that the words of Art. 1, sec. 10, sub-clause 2, of the Federal Constitution, relating to "inspection laws," were used in that sense.*

It is shown conclusively by the text of the "inspection laws" of the thirteen American colonies, in force in 1787 when the Constitution of the United States was adopted, that the form, capacity, dimensions and weight of packages, were objects of inspection, irrespective of the *quality* of the contents of such packages.

I refer to the particular Colonial Acts, and to the subjects in reference to which they were passed. *New Hampshire:* Casks of flaxseed, 1785. See Perpetual Laws of New Hampshire, 1789, p. 193. Dimensions of shingles, staves and hoops. Ibid, p. 188. *Massachusetts:* Shingles, staves and hoops. Acts and Resolves of the Province of Mass. Bay, vol. 3, [1742–1756,] p. 128, *et seq.*, chap. 22. Size of casks for pickled fish. Ibid, p. 1000. Act of 1757. *Rhode Island:* Regulating the inspection of beef, pork, pickled fish, and tobacco, and ascertaining the assize of casks, clapboards, shingles, boards, &c. Public Laws of Rhode Island and Providence Plantations. Ed. 1798, pp. 509, 512. 522. *Connecticut:* Statutes of Conn. Ed. 1786. For ascertaining the assize of casks used, for liquor, beef, pork and fish, pp. 18, 312. There were sworn packers of tobacco, whose duty it was to brand casks. *New York:* Laws, Ed. 1789. All flour for exportation to be packed in casks of a certain size and make. No flour to be exported without having been inspected. 1785, chap. 35, p. 197. No pot, or pearl ashes to be exported before inspection. *New Jersey:* Capacity of meat barrels. Act of April 6th, 1676. Leaming and Spicer, p. 116. Capacity of barrels, Ibid, p. 120; bricks, Ibid, p. 459; barrels, Ibid, 508. Assize of bread, Ibid, 545, 546, 547. Size of casks, Act of 1725. Staves, hoops, shingles, &c. Act of September 26th, 1772. Size of casks, Act of September 26th, 1772. *Pennsylvania:* Laws of Penn., A. J. Dallas, 1797. Dimensions of casks for beer, ale, pork, beef, &c., p. 27, *et seq.* Dimensions of staves, headings, boards, and timber. Ibid, 380. Flour casks,—how to be made and dimensions of. Ibid, p. 452, Act of 1781, chap. 201. *Maryland:* Gauge of barrels

for pork, beef, pitch, tar, turpentine, and tare of barrels for flour, or bread, 1745, chap. 15. Flour barrels, 1771, chap. 20. 1781, chap. 12. Staves and headings, 1745, chap. 15. 1771, chap. 20, 1786, chap. 17. Salted provisions, 1745, chap. 15, 1786, chap. 17. Hay and Straw, 1771, chap. 20. Flour, 1781, chap. 12. Fish, 1786, chap. 17. Liquor casks, 1774, chap. 23, 1777, chap. 17, 1784, chap. 83, 1785, chap. 87. Many other Maryland Provincial laws, prescribing the length, superficial and solid measure, weight and capacity of domestic products, are collected on pages 45–47 of the Report of Mr. J. H. Alexander, already referred to. *Virginia:* Laws of Va. Revisal 1783, pp. 47, 188, 192. Pork, &c., required to be packed in barrels before exportation. As to contents, quality and stamps of barrels of pork, beef, pitch, tar and turpentine. See Ibid, p. 47, Act of 1776, chap. 43. Inspection of tobacco, and size of tobacco hogsheads. Act of 1783, chap. 10, secs. 1, 15, 20. *North Carolina:* Iredell's Laws of N. C., Ed. 1791. Dimensions of beef, pork and fish casks,—staves and headings, and of boards, planks and shingles. Act of 1784, chap. 36. *South Carolina:* Grimke's Public Laws. Dimensions and capacity of beef and pork barrels, p. 209. *Georgia:* Watkins' Digest. Casks for beef and pork. Size of barrels for pitch, tar and turpentine. Act of 1766, No. 140, amended by Act of 1768, No. 179.

The legislation of the Province and State of Maryland, in reference to tobacco, is conclusive upon the question.

The *dimensions*, or *gauge*, of *tobacco hogsheads* was fixed by the Acts of 1658, chap. 2, 1676, chap. 9, 1694, chap. 5, 1699, chap. 4, 1704, chap. 53, 1711, chap. 5, 1715, chap. 38, 1716, chap. 8, 1717, chap. 7, 1723, chap. 25, 1747, chap. 26, 1753, chap. 22, 1763, chap. 18, and 1789, chap. 26.

The dimensions, or gauge, of such hogsheads, as prescribed by some of these Statutes, were as follows. I quote from J. H. Alex-

ander's report, page 35, supplying precise references to the particular Statutes, and adding, for the better understanding of the whole subject, the dimensions, or gauge, prescribed by subsequent Statutes.

Date.	Stave—Length. Max. Inches.	Min. Inches.	Head—Diameter. Max. Inches.	Min. Inches.	Bilge. Inches.
1658, chap. 2.	43	42	27	26	—
1692, chap. 82.	44	43	31	30	—
1694, chap. 5.	48	46	32	31	—
1704, chap. 53.	48	46	32	30	—
1711, chap. 5.	48	—	30	—	—
1715, chap. 38.	48	—	32	—	37
1747, chap. 26.	48	—	—	—	70
1763, chap. 18.	48	—	—	—	70
1789, chap. 26.	48	—	—	—	70
1828, chap. 164.	50	—	—	—	76
1864, chap. 346.	52	—	—	—	84
1872, chap. 36.	54	—	46	—	—

It will be of advantage to quote the very words of section 18 of the complete and elaborate Act of 1763, chap. 18. That section provided as follows: "And for restraining the undue practice of mixing trash with stemmed tobacco, and preventing the packing of tobacco in unsizeable casks, be it enacted and declared, that all stemmed tobacco, not laid straight, whether the same be packed loose, or in bundles, and all tobacco packed in hogsheads, which exceed forty-eight inches in the length of the stave, and seventy inches in the whole diameter within the staves, at the croze and bulge, shall be accounted unlawful tobacco and shall not be passed or received." Bacon's Laws of Maryland. The dimensions of a lawful hogshead of tobacco were again prescribed, as has been already stated, by the Tobacco Inspection Act of 1789, chap. 26, sec. 35. Provisions fixing the dimensions of hogsheads of tobacco

were in force from 1789 to 1872, when the dimensions of such hogsheads were prescribed anew by the Act of 1872, chap. 36, already cited.

These illustrations fully demonstrate that, when the Constitution of the United States was adopted in 1787, laws prescribing the form, capacity and weight of a package were understood to be *inspection laws;* and that it was the purpose of the framers of the Federal Constitution to reserve to the States the power of making such laws. The subsequent legislation of the States, prescribing the form, capacity, dimensions, or weight of packages containing articles grown, or produced, in any State, is evidence of the universal belief in the existence of a power in each State to make such regulations as *inspection laws.*

I cite examples of such legislation, following in the mode of citation, the precedent pursued by counsel, when examples of State laws of the same nature were referred to in argument in this Court in *Gibbons vs. Ogden,* 9 Wheat. 119–123 *note.* The British statutes and the Colonial laws, which have been referred to by way of illustration, are not within Rule 21, sec. 4, sub-clause 3, of this Court; and State statutes, cited with the same object, are probably not within its meaning. It does not, therefore, seem to be necessary to incumber the brief with the voluminous text of such laws.

Pennsylvania: Beef and Pork intended for exportation, when packed, or repacked, in Philadelphia: 1 Brightly's Purdon's Digest, 1873, pages 157, 158; Butter and Lard, Ibid, 188, 189; Domestic Distilled Spirits, Ibid, 525; Flaxseed, Ibid, 708; Flour and Meal, Ibid, 711. *Delaware:* Size of Casks for exportation of Breadstuffs. Revised Statutes, 1874, page 363. *Virginia:* Tobacco, Code, 1873, pages 739, 740; Fish, Ibid, 750; Pitch, Tar, Turpentine, Salt, Staves, Shingles and Lumber, Ibid, 751.

Rhode Island: Public Statutes, 1882; Beef and Pork Casks, chapter 3, page 294; Lime Casks, Ibid, 298; Fish Casks, Ibid, chapter 114, page 299. *Maine:* Revised Stat. 1871; Lime, chapter 39, section 3; Pot and Pearl Ashes, Ibid, section 9; Nails, Ibid, section 17; Fish, Ibid, chapter 40, sections 7, 8 and 11; Cord Wood, Ibid, chapter 41, section 1; Charcoal Baskets, Ibid, section 7; Packed Shingles, Ibid, section 16; Staves and Hoops, Ibid, sections 18 and 19; Beef and Pork Barrels, Ibid, chapter 38, sections 16 and 17. *New Hampshire:* Gen. Laws, 1878. No salted beef to be exported except in tierces, barrels, or half barrels of particular quality, weight and dimensions, and duly branded; chap. 126, secs. 4 and 5; Butter and Lard Casks, chap. 127, page 305; Fish Barrels, Tierces and Casks, chap. 129, page 310; Casks of Pot and Pearl Ashes, chap. 130, page 114. *Massachusetts:* General Statutes, 1860; Casks for Pickled Fish, chap. 49, sec. 44; Alewives, Ibid, sec. 50; Staves, Ibid, sec. 85; Hogshead Hoops, Ibid, sec. 86; Casks for Pot and Pearl Ashes, Ibid, sec. 167; Kegs for Butter and Lard, Ibid, sec. 14. *Connecticut:* General Statutes, 1875; Fish Barrels, page 275, sec. 19. *Vermont:* Revised Laws of 1880, page 715, Barrels of Flour, weight, &c. *New Jersey:* Revision, 1877; Beef and Pork Barrels; Flour and Meal Casks, Ibid, 437; Herring Casks, Ibid, 478. *Georgia:* Code, 1868; Flour Barrels, sec. 1562; Turpentine Barrels, Ibid, sec. 1573. *Louisiana:* Digest of Statutes, 1870; Beef and Pork Barrels, page 38, sec. 28. *Wisconsin:* Statutes of; Fish Casks, page 856, sec. 22. *Michigan:* Compiled Laws, 1871, vol. 1, pages 474–485, size and weight of Beef, Pork and Fish Barrels; Butter and Lard Barrels; Flour and Meal Casks; Pot and Pearl Ash Casks. *South Carolina:* General Statutes; Flour Barrels, page 275; Beef Barrels, Ibid, 279; Staves and Shingles, Ibid, 280. *North Carolina:* Battle's Revisal; Flour Barrels, chap. 61, sec. 34, page 496; Beef, or Pork Casks, Ibid, sec. 50, page 499; Fish Barrels, Ibid, sec. 53, page 499; Turpentine, Tar and Pitch Barrels, Ibid, sec. 54, page 500. *Tennessee:* Statutes, 1871; Butter

or Lard Casks, sec. 1832; Flour Barrels, 1834. *Florida:* Digest of Laws, 1881, page 579; Sizes of Tar and Turpentine Barrels. *Mississippi:* Flour and Pork Barrels; Rev. Code, 1880, sec. 949, page 280. *Ohio:* Revised Statutes, 1880; Hogsheads of Tobacco, page 264, sec. 39; Fish Barrels, Ibid, sec. 4300; Spirit Barrels, sec. 4327; Oil Barrels, sec. 4293; Pot and Pearl Ash Barrels, sec. 4291; Beef or Pork Barrels, sec. 4285; Flour and Meal Barrels, sec. 4281.

The legislation of Maryland, since 1787, affords ample illustration of the exercise of the same power. Pot and Pearl ashes, intended for exportation from Baltimore, or Georgetown, in Montgomery County, were required to be packed in a particular manner in casks, and to be inspected and weighed. 1792, chap. 65. A similar provision was made to prevent the exportation of unmerchantable flour and unsound salted provisions from Havre de Grace by the Act of 1796, chap. 21; and from Chester by the Act of 1797, chap. 7. By the Act of 1781, chap. 12, provision was made to prevent the exportation of bread and flour, which was not merchantable, from the town of Havre de Grace. This Act was enacted for a limited time only and expired. It was revived and enacted into a permanent law by the Act of 1801, chap. 102, sec. 2, and is set forth in a note to the section last referred to in the Acts of 1801. By sec. 6 of the Act of 1801, chap. 102, the size of all flour casks brought to Baltimore Town for exportation, the character of the materials and make, the manner of hooping and nailing such hoops, the particular length of the staves, the diameter of the casks at the heads, and the number of pounds of flour to be in each cask, are each specifically prescribed. The size of laths, and the mode of packing them, was regulated by the Act of 1811, chap. 69. The number and character of hoops upon casks of ground black oak bark, exported from the port of Baltimore, was prescribed by the Act of 1821, chap. 77. The gross weight of a hogshead of tobacco, as well as its net weight, was required

to be marked on the hogshead by the Act of 1789, chap. 26, sec. 21. The dimensions of the hogsheads in which tobacco was required to be packed was prescribed by section 35 of the Act last cited. Further illustration may be found in the following legislation: Weighing Wheat, 1858, chap. 256, sec. 5; *Frazier vs. Warfield*, 13 Md., 300–304; Fish Barrels and Tierces, Public Local Laws, Art. 4, sec. 309; Flour, Ibid, sec. 352; Domestic Distilled Liquors, Ibid, sec. 360; Flour Barrels, 1 Md. Code, Art. 96, sec. 20.

I may add to these references, also, the additional numerous examples of similar legislation in Maryland between 1787 and 1845, found in Mr. J. H. Alexander's Report, pages 45–47.

I have not, in the foregoing references, specifically indicated the statutes relating to the required *weight* of commodities. It is matter of common knowledge that the weight of a barrel of flour, of a barrel of corn meal, of a barrel of pork, or beef, of a bushel of wheat, or corn, of a ton of Anthracite coal, of live stock, of a load of manure, and of many other articles, is prescribed by the laws of many of the States; and, where such provisions exist, and officers are appointed to execute them, the laws of such States are, in principle, precisely identical with the early English Statutes and Charters, upon which they were in truth founded. Such articles may be weighed where they are found, or may be required to be brought to the "Public Beam," as was necessary, under the charter of 1 Hen. 4, to the City of London, in the case of "lead, wax, pepper, 'allom,' and the like," to be there duly weighed by appointed public officers.

Customs of London, 3d Ed., 16.

Among the inspection laws which were repealed by the Stat. of 5 Geo. 4, chap. 74, sec. 23, was the Stat. of 23 Eliz., chap. 8. This Act would seem to have been the original of those Acts,

which substitute the branding of the name of the owner, grower or maker, of the particular article on the package, (as may be done under the Act of 1870, chap. 291,) for an inspection of the contents of the package. By it, sec. 2, a melter of unwrought wax was required to stamp his name on every melted piece; and barrels, kilderkins, firkins, or casks, of honey, sec. 4, were required to be marked with the initials of the name, and surname of the maker or filler.

II.

When officers are appointed to perform specific duties at particular places, in the examination of movable articles, and when it is required by law that such articles shall be subjected to such examination before they can be accounted lawful objects of commerce, such articles, when intended for the uses of commerce, may properly be required by law to be taken to the places appointed by law for their examination, and to be *there* examined.

Moore vs. State, 47 Md., 483, 484.

Customs of London, 3d Ed., 16.

It is plain from the whole scope of the tobacco inspection legislation of Maryland that the State Tobacco Warehouses were the places where the duties of the State Inspectors of Tobacco were required to be performed, and the Court of Appeals of Maryland has so decided. *Moore vs. State*, 47 Md., 483, 484. *Turner vs. State*, 55 Md., 261, 262. Record, pp. 9, 10. The construction, which the Court of Appeals of Maryland has given, in this particular, to the Tobacco Inspection Acts of that State, must be regarded as correct.

Machine Co. vs. Gage, 100 U. S., 677.

The particular requirements of the Maryland laws were both reasonable and necessary. It would not be possible to carry to

each parcel of ground in the tobacco growing region of the State, upon which a hogshead of tobacco intended for exportation had been raised or packed, the force of men and the scales needed for the proper handling, examination and weighing of a package so great in bulk. The principal place of shipment in the State of Maryland has, therefore, been properly selected as the place at which such duties should be performed.

III.

The State of Maryland had the power, under the provisions of the Federal Constitution, to prescribe the form and dimensions of a lawful hogshead of tobacco.

It could, to give effect to this power, direct at what place, or places, an examination should be made of any such hogshead, intended for exportation, to ascertain whether it was "*lawful tobacco.*" It could dispense, under such proper conditions as it might prescribe, with an examination of the *quality* of the tobacco contained in such hogshead. It could, in the exercise of these powers, prescribe such charges for the work so done, as were *absolutely necessary* for executing such inspection laws in all the particulars to which such laws were properly applicable.

Pace vs. Burgess, 92 U. S., 372.

Whether such charges as it might impose were *absolutely necessary is a question of fact, to be determined by evidence.*

The legal presumption is in favor of the validity of the laws imposing such charges; *Cooper vs. Telfair*, 4 Dallas, 18; *Brown vs. Maryland*, 12 Wheat., 436; *Munn vs. Illinois*, 94 U. S., 123. No fact is disclosed in the record in this case from which an inference can possibly be drawn that the State of Maryland intended

that the Act of 1870, chap. 291, or any one of its Tobacco Laws, should be a mere cover for laying revenue duties upon exports.

Packet Co. vs. St. Louis, 100 U. S., 429, 430.

If the Defendant in Error was of the opinion that the State of Maryland had no right, under the Constitution of the United States, to require that the dimensions and gross weight of a hogshead, containing tobacco grown upon its soil, should be examined by its officers, before such hogshead was exported, he was quite right to raise that question by demurring to the *first* count of the indictment.

If, however, he wished to make the question that the charges imposed upon a hogshead of tobacco, grown in the State of Maryland, and packed in such manner as to bring it within the exception created by the Act of 1870, chap. 291, were not *absolutely necessary* to the execution of the inspection laws of the State, he ought to have raised that question by a *plea* to the second count of the indictment. The particular defence on which he relied, which rested upon an alleged matter of *fact*, could not be made by a *demurrer*. It does not, certainly, require an argument to prove that a question, which could not be raised by demurrer in the State Court, and which was not before the State Court upon the *demurrer* which was entered in the case, was not a question necessary to the determination of such demurrer, or one which the State Court must have decided in overruling such *demurrer*.

Brown vs. Atwell, 92 U. S., 329.

Citizens' Bank vs. Board of Liquidation, 98 U. S., 141, 142.

It must be presumed under the pleadings in this case, that the State of Maryland, if its power of enacting laws imposing a charge of outage upon hogsheads of tobacco was derived from Art. 1, sec. 10, sub-clause 2, of the Federal Constitution, acted under complete authority, and rightly exercised the power which it possessed.

Packet Co. vs. St. Louis, 100 U. S., 429, 430.

IV.

The Articles of Confederation, agreed to in 1778, formed a league between States.

Federalist, No. 43.

Under those articles each State could enact any laws intended to improve the quality of any one, or more, of its products, or to identify them as the growth of its soil, or to prepare such products for exportation to markets beyond its territorial limits. These powers were exercised by means of inspection laws.

Gibbons vs. Ogden, 9 Wheat., 203.

Each State could lay any impost, or duty, upon any article exported from, or imported into its territories, unless such impost, or duty, interfered with some stipulation of a treaty entered into by Congress with a foreign power. Art. 6. And Congress was forbidden to make any treaty, which prohibited the exportation, or importation, of any commodities whatsoever. Art. 9.

The Government, formed under those articles, had, therefore, no power to regulate by law commerce among the several States, or with foreign nations. The lack of this authority was one of the principal motives for the formation of a new Union.

Federalist, No. 22.

In the Constitution of 1787, which created the new Union, complete authority was given to Congress "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

Const. U. S., Art. 1, sec. 8, sub-clause 3.

The power thus given to Congress was qualified by a subsequent clause framed for the purpose of limiting the power of that Body over the commerce of the States. It was provided that, "No tax or duty shall be laid upon articles exported from any State.

Const. U. S., Art. 1, sec. 9, sub-clause 5, Federalist No. 32.
Story on Const. U. S., secs. 1013, 1014.
Woodruff vs. Parham, 8 Wallace, 144.
Ward vs. Maryland, 12 Wallace, 427.

The limited power thus given to Congress is necessarily exclusive, *Gibbons vs. Ogden*, 9 Wheat., 189–202, whenever the subject to which it relates is of such nature as to require that Congress only should exercise the power; *Cooley vs. Port Wardens*, 12 Howard, 319; *Gilman vs. Philadelphia*, 3 Wallace, 730; *Tiernan vs. Rinker*, 102 U. S., 126; *County of Mobile vs. Kimball*, 102 U. S., 696–702; but it does not, of course, extend, as an exclusive power, to any subject excepted from its operation by some other provision of the Federal Constitution.

Munn vs. Illinois, 94 U. S., 124.
County of Mobile vs. Kimball, 102 U. S., 696–702.

The subject of "inspections" has been thus excepted, from the exclusive power of Congress, by a subsequent clause of the Constitution.

Brown vs. Maryland, 12 Wheat, 438.

"No State shall, without the consent of Congress, lay any imposts, or duties, on imports, or exports, *except what may be absolutely necessary for executing its inspection laws;* and the net produce of all duties and imposts laid by any State on imports, or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of Congress."

Const. U. S., Art. 1, sec. 10, sub-clause 2.

The power of each State to enact inspection laws was recognized in this sub-clause by necessary implication.

Brown vs. Maryland, 12 Wheat, 438, 444.
Woodruff vs. Parham, 8 Wall, 131–133, 136.
Machine Co. vs. Gage, 100 U. S., 677.

Each State was left as much at liberty to provide by law for the improvement of the quality of articles produced by its labor, or for identifying them as the growth of its soil, or for fitting such articles for exportation, or domestic use, as it was before the Articles of Confederation were adopted, or as it was while those Articles remained in force.

Federalist, No. 32.
Gibbons vs. Ogden, 9 Wheat, 203.
Ward vs. Maryland, 12 Wallace, 428, 431.
Webber vs. Virginia, 103 U. S., 348.

Inspection laws, indeed, form a part of that immense mass of legislation, embracing every power capable of being exercised by a State within its territory, which has not been surrendered to the general government, and can be exercised most advantageously by the State itself.

Sturges vs. Crowningshield, 4 Wheat, 195, 196.
Gibbons vs. Ogden, 9 Wheat, 203.
City of New York vs. Milne, 11 Peters, 141.
Passenger Cases, 7 Howard, 398, 400, 414, 415, 417, 558.
License Tax Cases, 5 Wallace, 471.
U. S. vs. De Witt, 9 Wallace, 43, 44.
Patterson vs. Kentucky, 97 U. S., 503, 504.

They are considered, though particularly mentioned in the Federal Constitution, as being, nevertheless, parts of the Police legislation of each State.

License Cases, 5 Howard, 592.

Passenger Cases, 7 Howard, 424, 435.
City of New York vs. Milne, 11 Peters, 141, 142.

They "meet the commercial power of the Union in dealing with subjects under the protection of that power," although they exercise an authority which "can only be exerted under peculiar circumstances and to a limited extent."

Passenger Cases, 7 Howard, 408, 415.
License Cases, 5 Howard, 608, 625, 627, 631.
Baldwin's Const. Views, 189–192, 195, 196.

They are, indeed, the exercise of powers which do not admit of a uniform system of national legislation.

Wilson vs. Black Bird Creek Co., 2 Peters, 445.

Each State, in exercising its continuing powers under the Federal Constitution to enact inspection laws, has the right to use a fair legislative discretion.

Cooley vs. Board of Wardens, 12 Howard, 313.

It has the right, as I have shown, to prescribe the form of the package in which its products shall be encased before they are brought to, or sold in, the public market.

The State of Maryland exercised that power, so far as tobacco was concerned, by the Act of 1789, chap. 26, sec. 35, already cited, which provided that *no* tobacco, "except tobacco in parcels," should be passed, *or accounted "lawful tobacco,"* unless it was packed in hogsheads, not exceeding the dimensions prescribed by the particular section.

It again exercised the same power by the Act of 1864, chap. 346, sec. 42, already cited, and which was in force when the Act of 1870, chap. 291, was passed, by providing that "tobacco, raised

in this State, shall *not* be packed in casks" exceeding the dimensions prescribed by the particular section.

It again exercised the same power by the Act of 1872, chap. 36, sec. 26, already cited, and which is applicable to this case. It provided that "no tobacco of the growth of this State, should be accounted *lawful tobacco*," unless the same was packed in hogsheads not exceeding the dimensions prescribed by the particular section.

These regulations were, it will be observed, applicable to *all* tobacco, grown in the State of Maryland, and packed in hogsheads, without reference to the purposes for which such tobacco had been so packed. Such regulations were *aids to commerce*, local in their character, which the State had the power to apply and regulate until Congress should see fit to legislate in reference to the particular subject matter; *County of Mobile vs. Kimball*, 102 U. S., 698, 699; or, perhaps, to revise and control such State laws.

They were regulations, which the State might properly leave to create their own sufficient remedy, when tobacco, grown in the State, was dealt in within the limits of the State; because the dimensions of every hogshead, containing it, could then be examined by buyer and seller alike, and by all interested in the reputation of the commodity in the home market.

But they were, also, assuredly regulations which it was necessary that the State should enforce by a prescribed examination, to be made within its own territories, when hogsheads, containing tobacco grown in the State, were intended for shipment beyond the limits of the State, in order to ascertain, before such hogsheads were carried out of the State, that they were of such dimensions as to make their contents "*lawful tobacco*" under the laws of the State.

A State has the power, as is shown by the reasoning of this Court in *Cooley vs. Board of Wardens*, 12 Howard, 313, to subject

certain products, or commodities, grown, or produced, within its territory, to inspection, and it may exempt other products or commodities also grown, or produced, within its territory from inspection. It may, certainly, in the exercise of such discretion, exempt from inspection products, or commodities, produced, or made, within its own territory, when they are marked, or branded, with the name of the ascertained owner; and may require like products, or commodities, grown, or made, within its limits, to be inspected, which are not intended to be marketed upon the credit of an ascertained owner, and are not identified as owned by him.

It may, in the exercise of the same discretion, and of its unquestioned power to prescribe the method in which its products shall be fitted for exportation, *Gibbons vs. Ogden*, 9 Wheat., 203, direct that certain products shall, while they remain "in the bosom of the country," 12 Wheat., 438, and before exportation, be encased in the form of package best fitted, in its judgment, to secure the safety of the package, and to identify its contents as the growth of the State; and it may direct that the weight of such package, and the name of the owner of its contents, shall be plainly marked on such package. And it may, as I have said, in the exercise of its discretion, exempt the contents of such packages from inspection as to quality, when the weight of the package and the name of the owner are duly ascertained to be marked thereon.

Laws of the description referred to, passed by a State in the exercise of its fair discretion, and enforced by its officers, appointed for that purpose, are *inspection laws* in the strictest sense.

They are laws, which the State enacting them may, under the express terms of Art. I, sec. 10, sub-clause 2, of the Federal Constitution, execute by imposing duties on exports.

Brown vs. Maryland, 12 Wheat., 438.

Neilson vs. Garza, 2 Woods, 290.
City of New York vs. Milne, 11 Peters, 141, 142.
Packet Co. vs. St. Louis, 100 U. S., 429.
Vicksburg vs. Tobin, 100 U. S., 432.

The word "*exports*," used in the sub-clause last referred to, does not refer to articles brought from one State into another State, but refers exclusively to articles exported to foreign countries.

Woodruff vs. Parham, 8 Wall., 131–133, 136.
Machine Co. vs. Gage, 100 U. S., 677.

It was not required by the sub-clause referred to, that the imposts, or duties, levied by a State upon an imported, or exported article, subject to inspection, should be such only as were absolutely necessary for the execution of the particular laws requiring the inspection of such article, but only that they should be such as were absolutely necessary for the execution of the "inspection laws" of the State.

Packet Co. vs. St. Louis, 100 U. S., 429, 430.

The power of a State to lay such imposts, or duties, is, within the limits of the grant, a power as exclusive as any power vested in Congress.

Ward vs. Maryland, 12 Wallace, 427.
Foster vs. New Orleans, 94 U. S., 248.

If laws of any State, laying imposts, or duties, on exports, are *inspection laws*, within the fair intendment of Art. 1, sec. 10, sub-clause 2, of the Constitution of the United States, they are, under that sub-clause, constitutional and operative.

Under that sub-clause the State is made the primary judge whether the imposts and duties, so laid, are necessary for the execution of its inspection laws. It is prevented from using this

power for any other purpose by the declaration, in the sub-clause referred to, that the *net* produce of all duties, or imposts, laid by it, shall be for the use of the Treasury of the United States; and by the further sufficient provision that all laws, laying such imposts, shall be subject to the revision and control of Congress.

It would seem, under the particular sub-clause, that a State law, which is, in fact, an inspection law, and which imposes a duty on imports, or exports, for the purpose of executing the inspection laws of such State, is subject only to two restrictions, viz., the right of the United States to receive the net produce of such duties, or imposts, and to the power of Congress to revise and control the law imposing such duties, or imposts.

Baldwin's Const. Views, 189.

If the Maryland Laws to which reference has been made, do impose a duty on exports, the questions to be considered primarily are,—

First. Whether the State of Maryland had a right, under the Constitution of the United States, to require the Plaintiff in Error to carry the particular hogshead of tobacco, grown in Maryland, mentioned in the proceedings in this case, to a State Tobacco Warehouse, in order that its form, dimensions and gross weight might be there examined, and in order to ascertain whether the tobacco, in such hogshead, was exempted, under the Act of 1870, chap. 291, from inspection as to its *quality*.

Second. Whether the charge of "*outage,*" imposed by the laws of the State of Maryland upon a hogshead of tobacco, grown in that State, taken to one of its Tobacco Warehouses, is to be considered, *in this case,* to be a charge absolutely necessary to the execution of the inspection laws of that State.

First. I think I have shown that the capacity, form, dimensions, or gross weight of a package, containing a product, grown in a State, are the subjects of inspection by such State; and that a State has a paramount interest, and exercises a constitutional right in requiring that a staple, produced on its soil, which is the product of limited areas, and is important to its commerce, should be identified as the growth of its soil, before it is exported, and that it should be fitted for such exportation.

Gibbons vs. Ogden, 9 Wheat., 203.

The provisions made by the laws of Maryland, for subjecting tobacco, grown in that State, to inspection, to determine whether it is so packed as to make it "lawful tobacco," 1872, chap. 36, sec. 26, and to acsertain its weight and other particulars, are the common and approved methods of executing inspection laws, which require the ascertainment of the form, dimensions, weight, or identification, of a package.

Revised Stats. U. S., secs, 2882, 2890, 2915, 2920.

It was, as I have said, within the power and discretion of the State of Maryland to permit the owner of any hogshead of tobacco, grown in that State, and packed in the neighborhood in which it was grown, who proved his ownership and such place of packing to the satisfaction of the inspecting officer, to substitute the marking of his name and residence, in full, upon such hogshead, for an inspection of the *quality* of the tobacco contained therein.

Cooley vs. Board of Wardens, 12 Howard, 313.

Provisions of law, relieving the grower, or maker, of a commodity from an actual inspection of the *quality* of his product, when he assumes, under proper regulations, the responsibility of such quality by marking his name thereon, have existed in England and in the United States ever since the Stat. of 23 Eliz., chap. 8, to which I have already alluded; and were, probably, as I have before said, originally grounded upon the device adopted by that Statute.

The Maryland Act of 1870, chap. 291, when it released a hogshead, containing tobacco, grown in Maryland, and packed and marked, as indicated in that Act, from inspection of the *quality* of its contents, did not relieve the owner of such tobacco from the obligation to have the hogshead, containing such tobacco, examined for the purpose of determining whether it was of the prescribed dimensions and "lawful tobacco;" 1872, chap. 36, sec. 26; or from the obligation to prove that it was packed in the neighborhood where the tobacco, which it contained, was grown, and that the name and residence, marked upon the hogshead, were those of its owner. 1870, chap. 291. *Turner vs. State*, 55 Md., 259. Record, p. 8. Unless the proofs, last alluded to, were afforded, the *quality* of the tobacco in the hogshead were also subject to inspection.

The provisions of law to which every hogshead containing tobacco, grown in Maryland, remains subject, even though such hogshead of tobacco be within the exception created by the Act of 1870, chap. 291, were strictly within the *purview* of "inspection laws." They were intended to act upon a tobacco hogshead, prepared for exportation, while the article "is in the bosom of the country" which produced it. *Brown vs. Maryland*, 12 Wheat., 438. They were intended to act upon such hogshead, before it became an article of foreign commerce, or of commerce among the States, and to prepare it for that purpose.

Gibbons vs. Ogden, 9 Wheat., 203.
License Cases, 5 Howard, 577.
Hall vs. De Cuir, 95, U. S., 488.
Foster vs. New Orleans, 94 U. S., 248.

Second. I cannot say, with certainty, when the term "*outage*" first came into use in Maryland. Since the Act of 1789, chap. 26, secs. 60, 61, it has been considered as being the charge payable to the State upon the withdrawal of a hogshead of tobacco from a

State Tobacco Warehouse, for the labor connected with its receiving, handling,—(1864, chap. 346, sec. 10; 1872, chap. 36, secs. 10, 11,)—for the examination of the dimensions of the hogshead,—(1872, chap. 36, sec. 26,)—sampling its contents, if it has been opened for inspection,—(1872, chap. 36, secs. 11, 13; 1864, chap. 346, secs. 15–25,)—or for ascertaining that it was tobacco, grown in the State, and packed in the neighborhood in which it was grown,—that it was the property of the person, whose name was marked upon the hogshead, and that he resided at the place thereon inscribed as his residence,—1870, chap. 291,—for weighing the hogshead and ascertaining and properly entering its warehouse number and gross weight, if it was not opened for inspection, and also its warehouse number and net weight if it was opened for inspection;—1872, chap. 36, secs. 11, 15;—and for all other matters of expense to the State, caused by the required inspection of tobacco grown in the State, which are not by the laws of Maryland made the subject of a special additional charge upon hogsheads containing tobacco grown in the State, required by the Act of 1870, chap. 291, to be taken to a State Tobacco Warehouse.

The sum, payable upon the particular hogshead of tobacco, under the Act of 1872, chap. 36, sec. 20, as amended by the Act of 1872, chap. 228, was two dollars.

If the particular inquiry were cognizable in this Court, and the *onus* of proof rested upon the Defendant in Error, and not upon the Plaintiff in Error, the amount of labor required to be rendered in connection with each hogshead of tobacco, and the need of keeping the five State Tobacco Warehouses, fitted for the uses for which they were intended, would serve as sufficient proofs that the charge made for "outage" upon a hogshead, containing tobacco grown in Maryland, taken from a State Warehouse, must, as an aggregate charge, be deemed *absolutely necessary* to the execution of the inspection laws of the State of Maryland.

Packet Co. vs. St. Louis, 100 U. S., 429,-430.

The rulings of this Court in *Guy vs. Baltimore*, 100 U. S., 437–444, are not at variance with anything which I have hitherto urged.

The question, in this case, is not whether the State of Maryland can, consistently with the Constitution of the United States, impose upon the products of other States, brought therein for sale, or upon its own citizens, engaged in the transportation of such products to its territory, or in selling such products, more onerous public burdens, or taxes, than it imposes upon the like products of its own territory.

The question is not whether the Maryland Act, which is in controversy, levies a duty upon an export, Const. U. S., Art. 1, sec. 10, sub-clause 2, or is a regulation of commerce, Const. U. S., Art. 1, sec. 8, sub-clause 3.

The question, on the contrary, is whether, if the charge, authorized by the Maryland Act of 1870, chap. 291, be an impost, or duty, on an export, or a regulation of commerce, it was not valid as a duty imposed, or a regulation of commerce incidentally made by the State of Maryland, in relation to a product of its own soil, by means of inspection laws, which it had authority to enact and to execute, within its own territory, under the implied and express terms of Art. 1, sec. 10, sub-clause 2, of the Federal Constitution ?

The case of the appellee does not rest only upon the grounds hitherto urged.

Under all the circumstances, which I have set forth, the charges made by the State of Maryland upon a hogshead, containing tobacco grown in Maryland, required to be brought to a State

Tobacco Warehouse for purposes of inspection, may be sustained upon other and broader grounds.

The fees, payable under the name of "outage" upon a hogshead containing such tobacco, when it is withdrawn from a Maryland State Tobacco Warehouse for exportation, do not, it appears to me, constitute a duty upon an export. I use, in substance, the language of this Court, when I say that the charge is one, which accrues in the due administration of the inspection laws of Maryland. *It is, as has been shown, simply a compensation required for services properly rendered.* The rule, by which the aggregate amount of that compensation is estimated, may be an arbitrary one; but an arbitrary rule may be more convenient and less onerous than any other which can be adopted. "In the case under consideration, having due regard to that latitude of discretion, which" the State of Maryland was "entitled to exercise in the selection of the means for attaining a constitutional object," it cannot be said "that the charge imposed is excessive, or that it amounts to an infringement of the constitutional provision referred to." It cannot be said "that it is a tax, or duty, instead of what it purports to be, *a fee, or a charge for the employment of that instrumentality, which the circumstances of the case render necessary for the protection of the State.*"

Pace vs. Burgess, Collector, 92 U. S., 375, 376.

This conclusion is supported by the reasoning of this Court in the following cases.

Packet Co. vs. Keokuk, 95 U. S., 84, 86–89.
Packet Co. vs. St. Louis, 100 U. S., 429, 430.
Vicksburg vs. Tobin, 100 U. S., 432, 433.

It may be true, that the imposition of this charge has a remote and considerable influence on commerce. The charge is not objectionable on that account.

State Tax on Railway Gross Receipts, 15 Wallace, 293.
Sherlock vs. Alling, 93 U. S. 103, 104.

Finally, I may sum up the discussion by saying that even if the charge imposed by the Maryland Act of 1870, chap. 291, upon the particular hogshead of tobacco, which is the subject of this litigation, is a duty on an export, and even if the charge so imposed is a regulation of commerce, the duty imposed, and the regulation made, were both within the power of the State under the express and implied terms of Art. 1, sec. 10, sub-clause 2, of the Constitution of the United States.

Gibbons vs. Ogden, 9 Wheat., 203.
Railroad Co. vs. Husen, 95 U. S., 472.

Such charge and regulation, by whatever name they are called, do not invade any part of that domain of legislation which belongs exclusively to the Congress of the United States.

Henderson vs. Mayor, &c., 92 U. S., 272.
Railroad Co. vs. Husen, 95 U. S., 471, 472.

CHAS. J. M. GWINN,
Attorney General of Maryland,
for State of Maryland,
Defendant in Error.

BALTIMORE, MD., *December 2d*, 1882.

17-39

OFFICE SUPREME COURT U.S.
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IN THE

Supreme Court of the United States.

HENRY A. TURNER
vs.
STATE OF MARYLAND.

No. 490.

Supplementary Notes on the part of the Defendant in Error.

The whole argument made on the part of the plaintiff in error turns upon the unconstitutionality of that part of the Maryland act of 1870, chapter 291, which begins with the word "provided," (*see* 10 *line of section quoted on page* 14 *of appendix* to brief of plaintiff in error,) and ends with the close of the section.

The first part of the section,—down to the word "*provided*,"—of which I have spoken, is an exact transcript or re-enactment of the whole of section 41 of the act of 1864, chapter 346.

I cite the words of that section, that this may plainly appear.

"SEC. 41. *Be it enacted*, That, after the passage of this act, it shall not be lawful to carry out of this state, in

hogsheads, any tobacco raised in this state, except in hogsheads which shall have been inspected, passed, and marked agreeably to the provisions of this act, unless such tobacco shall have been inspected and passed before this act goes into operation; and any person violating the provisions of this section shall forfeit and pay the sum of three hundred dollars, which may be recovered in any court of law of this state, and which shall go to the credit of the tobacco fund."

The act of 1870, chapter 291, in amending section 41 of the act of 1864, chapter 346, followed the course prescribed by the directory provision contained in the 29th section of the Maryland Constitution of 1867, now and then in force,—which required the general assembly, in amending any article or section of the code, to enact the same as said article or section would read when amended.

The section, as amended, however, shows distinctly and by a clear line of demarcation, what part of it was a mere re-enactment of the 41st section of the act of 1864, chap. 346, and what part was new.

The whole argument of the plaintiff in error rests, as I have said, upon the unconstitutionality of that part of the act of 1870, chap. 491, which begins with the word "*provided.*"

"The principle that a statute is void only so far as its provisions are repugnant to the Constitution,—that one provision may be thus void, and this not affect other provisions of the statute, has been frequently declared." Sedgwick on the Const. of Stat. and Const. Law, 2d ed., p. 413. "The principle is now well understood that where a statute has been passed by the legislature under all the forms and sanctions requisite to the making of laws, some part of which is not within the competency of the legislative power, or is repugnant to any provision of the

Constitution, such part thereof will be adjudged void and of no avail; while all other parts of the act, not obnoxious to the same objection, will be held valid, and have the full force of law." *Ibid.*

This rule, recognized and enforced in many state cases, was stated, in substance, by this court, in *U. S. vs. Reese*, 92 U. S., 221.

The part of the act of 1870, chap. 291, which extends from the beginning of the section to the word " provided," is wholly separable from the remaining part of the section.

There can be no presumption that the general assembly of Maryland would not have passed the first part of the section if it had known that the last part was unconstitutional; *Comm. vs. Hitchings*, 5 Gray, 482; *State vs. Wheeler*, 25 Conn., 290; Sedgwick on Const. of Stat. and Const. Law, 2d ed., 413, note (a); because the said first part of the new section was then in force as a subsisting law.

If it be true, then, that the part of the section of the act of 1870, chap. 291, beginning with the word "*provided*," is unconstitutional, then the remaining part of the particluar section of the act of 1870, which re-enacted section 41 of the act of 1864, chap. 346, remains in force.

The indictment in this case was so drawn as to rest upon so much of the act of 1864, chap. 346, as was re-enacted by the act of 1870, chap. 291, although it was also so drawn as to permit every question to be raised touching the *proviso*, which it was desirable should be settled.

While, therefore, the defendant in error insists that all that part of the act of 1870, chap. 291, which follows the word " provided " is valid, under the Constitution of the United States, it insists that, if it is wrong in this particular, the judgment below must nevertheless be affirmed;

and that the effect of this controversy will then have been to leave the law of Maryland, so far as the questions involved in this case are concerned, precisely where it was before the Maryland act of 1870, chap. 291, was enacted, there having been no other or subsequent law of that state affecting the question.

CHAS. J. M. GWINN,
Att'y General of Maryland, for State of Maryland,
Defendant in Error.